Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Applications of Viasat, Inc.	)	IB Docket No. 22-153
	)	
and	)	
	)	
Connect Topco Limited	)	ICFS File No. SES-T/C-20220201-00145
	)	
For Consent To Transfer Control of Authorizations	)	

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: May 19, 2023 **Released: May 19, 2023**

By the Chiefs, Space Bureau and Office of International Affairs

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I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Declaratory Ruling*, we consider the applications filed pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the Act),[1] of Viasat, Inc. (Viasat) and Connect Topco Limited (Connect Topco) (together, the Applicants) for Commission consent to the transfer of control of authorizations held by Inmarsat Group Holdings Inc. (IGHI), Inmarsat Inc., Inmarsat Solutions (US) Inc. (Inmarsat Solutions), and ISAT US Inc. (ISAT) (Inmarsat Licensees, and together with Inmarsat Group Holdings Limited, Inmarsat) from their parent, Connect Topco, to Viasat.[2] Viasat (Petitioner) also filed a related petition pursuant to section 1.5000(a)(1) of the Commission's rules, requesting a declaratory ruling to permit foreign ownership in excess of the statutory benchmarks under section 310(b)(4) of the Act (Viasat Petition).[3]

2. Based on the record before us and our review of the likely competitive effects of the proposed transaction, we find that the transaction, on balance, will serve the public interest, convenience, and necessity. Accordingly, for the reasons discussed below, we grant the applications to the transaction, subject to conditions, and grant Viasat's petition for a declaratory ruling.

II. BACKGROUND

A. Description of the Applicants

3. Viasat, a publicly traded Delaware corporation, is a provider of communications services and technologies, including satellite communications technologies for both military and commercial uses.[4] Viasat operates Ka-band (20/30 GHz) satellites, user terminals, and ground infrastructure to provide broadband services to consumers, government users, and enterprises, including residential broadband service and in-flight broadband connectivity to passengers on aircraft.[5] Viasat's broadband satellite network provides service throughout the United States, including through the ViaSat-1 and ViaSat-2 satellites.[6] According to the Applicants, Viasat earned $2.79 billion in revenues during the

[1] 47 U.S.C. §§ 214, 310(d); *see also* 47 CFR §§ 25.119, 25.137(g), 63.24.

[2] Consolidated Application for Consent to Transfer Control of Connect Topco Limited and Its Subsidiaries That Hold Commission Authorizations, Narrative, ICFS File No. SES-T/C-20220201-00145 (filed Jan. 31, 2022) (Narrative). Appendix A attached to this item provides a list of the Applications. *See also Applications Filed for Transfer of Control of Inmarsat to Viasat, Inc.*, IB Docket No. 22-153, Public Notice, DA 22-517 (IB May 11, 2022) (*Applications Public Notice*). The Applicants filed a supplement to the public interest statement in the Narrative on April 25, 2022. Letter from Matthew Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC (Apr. 25, 2022) (Public Interest Supplement).

[3] 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1); Viasat Inc., Petition for Declaratory Ruling under Section 310(b)(4) of the Communications Act, of 1934, as Amended, ICFS File No. ISP-PDR-20220131-00001 (filed Jan. 31, 2022) (Viasat Petition). Viasat (Petitioner) filed two supplements to the Petition on April 25, 2022. Letter from Matthew Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC (Apr. 25, 2022) (Updated Ownership Diagrams Supplement) (adding additional pre- and post-transaction ownership information); Letter from Matthew Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC (Apr. 25, 2022) (Updated Specific Approval and Advance Approval Supplement) (providing clarifications regarding specific approval and advance approval of foreign entities in Sections J and K of the Petition). The Petitioner filed two letters to supplement the Viasat Petition on June 6, 2022 and March 24, 2023. Letter from Matthew Murchison, Counsel to Viasat, and Alfred Mamlet, Counsel to Connect Topco, to Marlene H. Dortch, Secretary, FCC (June 6, 2022) (informing the Commission of non-material changes to Connect Topco's ownership structure); Letter from Matthew Murchison, Counsel to Viasat, and Alfred Mamlet, Counsel to Connect Topco, to Marlene H. Dortch, Secretary, FCC (Mar. 24, 2023) (informing the Commission of non-material changes to Viasat's and Connect Topco's ownership).

[4] Narrative at 2; Viasat Petition at 2.

[5] Narrative at 2; Viasat, 2021 SEC Form 10-K at 4 (filed May 31, 2022) (Viasat 2021 SEC Form 10-K) ("[Viasat] own[s] four Ka-band satellites in service . . . In addition, [Viasat] ha[s] lifetime leases of Ka-band capacity on two satellites.").

[6] Narrative at 2-3.

fiscal year ending March 31, 2022,[7] approximately 25%, or $700 million of which comprised revenues from the U.S. Government.[8]

4. Connect Topco, a Guernsey limited company, is a corporate parent of Inmarsat Group Holdings Limited, a U.K. limited company that holds Commission grants of market access, earth station licenses, and international section 214 authorizations through four wholly owned Delaware corporations—IGHI, Inmarsat Inc., Inmarsat Solutions, and ISAT.[9] Inmarsat provides satellite services in the United States using spectrum in the L-band (1 GHz) and Ka-band to support connectivity to maritime vessels and safety of life services to maritime users, cockpit communications and safety of flight for commercial aircraft, and connectivity to business aircraft and government users.[10] Inmarsat owns and operates 14 geostationary satellites, which includes its four L-band ELERA satellites, five Ka-band Global Xpress satellites, and the more recent I-6 satellites featuring hybrid L-band, narrowband, and Ka-band capabilities.[11] Inmarsat earned $1.35 billion in revenues during 2021, approximately $350 million of which is comprised of revenues from the U.S. Government.[12]

B. Description of the Transaction

5. On November 8, 2021, Viasat entered into a Share Purchase Agreement with the Inmarsat Investors and certain Inmarsat senior management shareholders (collectively, Inmarsat Shareholders), under which Viasat agreed to acquire ownership of Connect Topco.[13] Pursuant to the proposed transaction, Inmarsat Shareholders would receive $850 million in cash, subject to adjustments, and newly issued shares of the common stock of Viasat valued at approximately $3.1 billion and representing, in the aggregate, approximately 37.5% of the outstanding common stock of Viasat.[14] Viasat would also assume approximately $3.4 billion of net debt as part of the proposed transaction.[15]

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[7] Viasat 2021 SEC Form 10-K at F-5.

[8] *Id*. at F-9.

[9] According to the Applicants, Connect Topco is directly owned by (i) Triton LuxTopHolding SARL, a Luxembourg limited liability company, which is owned by certain limited partnerships comprising the Apax IX investment fund controlled by Apax IX GP Co. Limited, a Guernsey limited company; (ii) WP Triton Co-Invest, L.P., a Cayman Islands exempted limited partnership, which is owned by certain investment funds controlled by Warburg Pincus LLC, a New York limited liability company; (iii) CPP Investment Board Private Holdings (4) Inc., a Canadian corporation, which is a wholly owned subsidiary of Canada Pension Plan Investment Board; and (iv) 2684343 Ontario Limited, an Ontario, Canada corporation which is a wholly owned subsidiary of Ontario Teachers' Pension Plan Board. Each of Triton LuxTopHolding SARL, WP Triton Co-Invest, L.P., CPP Investment Board Private Holdings (4) Inc., and 2684343 Ontario Limited (together, the Inmarsat Investors) directly holds 25% of Connect Topco's voting interests. Narrative at 3-4; Viasat Petition at 4. Connect Topco owns 99.19% of Connect Sub-Topco Limited with the remaining 0.81% owned by a small number of Inmarsat senior management. Narrative at 3. Connect Sub-Topco Limited has 100% indirect equity and voting interests in Inmarsat. *Id*. at Attach. B.

[10] Narrative at 2-3.

[11] Inmarsat, *Satellites*, https://www.inmarsat.com/en/about/technology/satellites html (last visited May 11, 2023); Inmarsat, *I-6 Satellites*, https://www.inmarsat.com/en/about/technology/satellites/i-6 html (last visited May 11, 2023).

[12] Inmarsat, Connect BidCo Limited Annual Report and Accounts 2021 at 28, https://www.inmarsat.com/content/dam/inmarsat/corporate/documents/corporate/sustainability/how-we-do-business/annualreport/ConnectBidco_FY21_AnnualReportandAccounts_Final.pdf.coredownload.pdf (*See* "U.S. Government revenue, increasing by $39.7 million (12.8% yearly increase)," which we convert to an annual revenue figure as follows: $39.7 million + ($39.7 million / 12.8%) = $350 million).

[13] Narrative at 4; Viasat Petition at 11.

[14] Narrative at 4.

[15] Narrative at 4.

6. The Applicants assert that grant of the applications would serve the public interest, convenience, and necessity and would not violate any statute or Commission rule or raise issues in the areas of national security, law enforcement, foreign policy, or trade policy.[16] The Applicants argue that the proposed transaction will not result in competitive harm in market segments related to consumer broadband Internet access, commercial aviation, business aviation, maritime, energy, government, satellite capacity supply, or in other segments.[17] The Applicants claim that the combined company will be able to more efficiently deliver more robust and innovative services,[18] resulting in enhanced bandwidth and reliability.[19]

C. Transaction Review Process

7. On January 31, 2022, Viasat and Inmarsat filed applications with the Commission, including five FCC Forms 312 related to various earth station authorizations and one application related to international Section 214 authorizations.[20] The Applicants also filed a petition pursuant to section 1.5000(a)(1) of the Commission's rules requesting a declaratory ruling to permit foreign ownership in IGHI, the controlling U. S. parent of licensees Inmarsat Solutions and ISAT, above the 25% benchmarks in section 310(b)(4) of the Act.[21] On April 25, 2022, the Applicants filed a supplement to the public interest statement in the Narrative[22] and Petitioner filed two supplements to the Viasat Petition.[23]

8. On May 11, 2022, the International Bureau (IB)[24] released a public notice to announce the opening of a new docket.[25] In response to this public notice, the Commission received one petition to deny, one comment, the Applicants' consolidated opposition and response, and a reply.[26] On November

[16] Narrative at 5, 9.

[17] Public Interest Supplement at 3-5.

[18] Narrative at 7-8.

[19] Public Interest Supplement at 6.

[20] Narrative at 1, Attach. A.

[21] *See* Viasat Petition.

[22] *See* Public Interest Supplement.

[23] Updated Ownership Diagrams Supplement; Updated Specific Approval and Advance Approval Supplement.

[24] On April 11, 2023, the Commission reorganized the International Bureau into the Space Bureau and the Office of International Affairs. *See* News Release, FCC, FCC Space Bureau & Office Of International Affairs to Launch Next Week; Public Kickoff Event to Take Place on April 11 at FCC Headquarters (Apr. 7, 2023), https://www fcc.gov/document/fcc-space-bureau-office-international-affairs-launches-april-11; *see also Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket 23-12, Order, FCC 23-1 (Jan. 9, 2023).

[25] *Applications Public Notice*. Prior to the release of this public notice, the application and subsequent filings were submitted via the International Communications Filing System (ICFS) under the File No. SES-T/C-20220201-00145. After the docket was opened on May 11, 2022, all of these filings became available under IB Docket No. 22-153.

[26] Kuiper Systems LLC, Comments (rec. June 10, 2022) (Kuiper Comments); Space Exploration Holdings, LLC, Petition to Deny (rec. June 10, 2022) (SpaceX Petition); Viasat, Inc. And Connect Topco Limited, Consolidated Opposition to Petition to Deny of Space Exploration Holdings, LLC and Response to Comments of Kuiper Systems LLC (rec. June 27, 2022) (Opposition); Space Exploration Holdings, LLC, Reply (rec. July 7, 2022) (SpaceX Reply). On January 23, 2023, SpaceX submitted an *ex parte* that reiterates concerns in its petition and on February 7, 2023, Viasat responded. Letter from David Goldman, Sr. Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Jan. 23, 2023) (SpaceX Jan. 23, 2023 *Ex Parte* Letter); Letter from Matthew T. Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Feb. 7, 2023) (Viasat Feb. 7, 2023 *Ex Parte* Letter). On March 16, 2023, SpaceX followed up on its claims and on March 22, 2013, Viasat responded. Letter from David Goldman, Sr. (continued….)

16, 2022, IB and the Office of Economics and Analytics (OEA) issued Information Requests to both Applicants,[27] to which the Applicants responded on December 5, 2022, December 23, 2022, and January 13, 2023,[28] and supplemented in March and April 2023.[29]

9. On June 6, 2022, the United States Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee),[30] requested that the Commission defer action on the Application until such time as Committee has completed its review of the applications and Viasat Petition for any national security and law enforcement concerns that may be raised by foreign participation in the U.S. telecommunications sector.[31] On November 8, 2022, the Committee notified the Commission that it would complete its initial review before the end of the 120-day initial review period.[32] On March 9, 2023, the National Telecommunications and Information Administration (NTIA) filed a Petition to Adopt Conditions to Authorizations and Licenses on behalf of the Committee (Committee Petition).[33] The Committee advises that it has no objection to the Commission approving the applications and Viasat Petition, provided that the Commission conditions its approval on the assurance of Connect Topco and Viasat, to abide by the commitments and undertakings set forth in the February 15, 2023 Letter of Agreement (LOA).[34] Finally,

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Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Mar. 16, 2023) (SpaceX Mar. 16, 2023 *Ex Parte* Letter); Letter from Matthew T. Murchison, Counsel to Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 22-153 (filed Mar. 22, 2023) (Viasat Mar. 22, 2023 *Ex Parte* Letter).

[27] *Viasat., Inc. General Information Request*, IB Docket No. 22-153 (IB/OEA Nov. 16, 2022) (Viasat Nov. 16, 2022 RFI); *Connect Topco Limited. General Information Request*, IB Docket No. 22-153 (IB/OEA Nov. 16, 2022) (Inmarsat Nov. 16, 2022 RFI).

[28] Viasat/Inmarsat Dec. 5, 2022 RFI Response; Viasat Dec. 23, 2022 RFI Narrative Response; Inmarsat Dec. 23, 2022 RFI Narrative Response; Viasat Jan. 13, 2023 RFI Supplemental Response; Inmarsat Jan. 13, 2023 RFI Supplemental Response.

[29] Viasat Mar. 8, 2023 RFI Further Supplemental Response; Inmarsat Mar. 8, 2023 RFI Response; Viasat Mar. 20, 2023 RFI Second Further Supplemental Response; Inmarsat Mar. 21, 2023 RFI Response; Viasat Apr. 7, 2023 RFI Third Further Supplemental Response; Inmarsat Apr. 10, 2023 RFI Response.

[30] DOJ, The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector – Frequently Asked Questions, https://www.justice.gov/nsd/committee-assessment-foreign-participation-united-states-telecommunications-services-sector (last visited May 11, 2023).

[31] Letter from David P. Palmer, Attorney Advisor, and Devin A. DeBacker, Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, File Nos. IB Docket No. 22-153; SES-T/C-20220201-00145; SES-T/C-20220201-00146; SES-T/C-20220201-00147; SES-T/C-20220201-00148; SES-T/C-20220201-00149; ITC-T/C-20220201- 00026; ISP-PDR-20220131-00001 (filed June 6, 2022) (Committee Deferral Letter).

[32] Letter from David P. Palmer, Attorney Advisor, and Devin A. DeBacker, Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC File Nos. IB Docket No. 22-153; SES-T/C-20220201-00145; SES-T/C-20220201-00146; SES-T/C-20220201-00147; SES-T/C-20220201-00148; SES-T/C-20220201-00149; ITC-T/C-20220201- 00026; ISP-PDR-20220131-00001 (filed Nov. 8, 2022).

[33] National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorizations and Licenses, FCC Nos. IB Docket 22-153; SES-T/C-20220201-00145; SES-T/C-20220201-00146; SES-T/C-20220201-00147; SES-T/C-20220201-00148; SES-T/C-20220201-00149; ITC-T/C-20220201-00026; ISP-PDR-20220131-00001, at 1-2 (filed Mar. 9, 2023).

[34] Committee Petition at 1-2; Letter of Agreement from Robert Blair, Senior Vice President, General Counsel and Secretary, Viasat, and Alison Horrocks, Secretary, Connect Topco, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement, FIRS, on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division, and Director, Global Investment

(continued….)

the proposed transaction is also subject to review by the DOJ's Antitrust Division pursuant to section 7 of the Clayton Act.[35]

III. STANDARD OF REVIEW AND PUBLIC INTEREST FRAMEWORK

10. Pursuant to sections 214(a) and 310(d) of the Act and section 25.119(a) of the Commission's rules, we must determine whether the proposed transfer of control to Viasat of authorizations held by Inmarsat will serve the public interest, convenience, and necessity.[36] In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules.[37] If the proposed transaction does not violate a statute or rule, we then consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[38] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[39] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[40] If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the Application for hearing.[41]

11. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"[42] which include, among other things, a deeply rooted preference for preserving

and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense (dated Feb. 15, 2023) (LOA). A copy of the LOA is attached to the Committee Petition.

[35] 15 U.S.C. § 18.

[36] 47 U.S.C. § 214(a), 310(d); 47 CFR § 25.119(a). *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil, S.A.B. de C.V. For Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*); *Applications of T-Mobile US, Inc., and Sprint Corporation, Consent to Transfer Control of Licenses and Authorizations, Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisitions L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10595, para. 39 (2019) (*T-Mobile-Sprint Order*); *Applications of AT&T and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 29 FCC Rcd 9131, 9139, para. 18 & n.35 (2015) (*AT&T-DIRECTV Order*).

[37] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595, para. 39; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 18.

[38] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 18.

[39] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 18.

[40] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 41; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18.

[41] *Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10596, para. 41; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18.

[42] *Western Union Division, Commercial Telegrapher's Union, A.F. of L. v. United States*, 87 F. Supp. 324, 335 (D.D.C. 1949), *aff'd*, 338 U.S. 864 (1949); *see AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19; *see also T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *FCC v. RCA Communications, Inc.*, 346 U.S. 86, 93-95 (1953).

and enhancing competition in relevant markets,[43] accelerating private sector deployment of advanced services,[44] promoting a diversity of information sources and services to the public,[45] and generally managing the spectrum in the public interest.[46] Our public interest analysis also entails assessing whether the proposed transaction would affect the quality of communications services or result in the provision of new or additional services to consumers.[47] In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.[48]

12. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.[49] The Commission's competitive analysis under the public interest standard is broader than the DOJ's consideration, and may, for example, consider whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.[50] Finally, the Commission's public interest authority enables us, where appropriate, to impose and enforce transaction-related conditions to ensure that the public interest is served by the transaction.[51] Specifically, section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.[52] Similarly, section

[43] 47 U.S.C. §§ 521(6), 532(a); *see, e.g., Applications for Consent to the Transfer of Control of Licenses and Authorizations by Time Warner, Inc. and America Online, Inc. to AOL Time Warner Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 6547, 6555-56, para. 22 (2001).

[44] 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Preamble, Pub. L. No. 104-104, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services").

[45] 47 U.S.C. §§ 521(4), 532(a); *see Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 663 (1994) ("[I]t has long been a tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.") (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 & n.27 (1972)) (internal quotation marks omitted).

[46] 47 U.S.C. §§ 301, 303, 307.

[47] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[48] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[49] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9140, para. 20; *Satellite Bus. Sys.*, 62 FCC 2d 997, 1068-73, 1088 (1977), *aff'd sub nom United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *see also Northeast Utils. Serv. Co. v. FERC*, 993 F.2d 937, 947 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

[50] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 23; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 21; *EchoStar Communications Corporation, (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20575-76, para. 27 (2002) (*EchoStar-DIRECTV HDO*).

[51] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17003, para. 24; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10595-96, para. 40; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *see also Application of WorldCom, Inc. and MCI Commc'ns Corp. for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, para. 10 (1998) (*WorldCom-MCI Order*) (stating that the Commission may attach conditions to the transfers).

[52] 47 U.S.C. § 303(r); *see AT&T-DIRECTV Order*, 30 FCC Rcd at 9141, para. 22; *see also United States v. Sw. Cable Co.*, 392 U.S. 157, 178 (1968) (holding that section 303(r) permits the Commission to order a cable company (continued….)

214(c) of the Act authorizes the Commission to attach to the certificate "such terms and conditions as in its judgment the public convenience and necessity may require."[53]

IV. QUALIFICATIONS OF THE APPLICANTS AND COMPLIANCE WITH COMMUNICATIONS ACT AND FCC RULES AND POLICIES

A. Qualifications of the Applicants

13. Among the factors that the Commission considers in its public interest review is whether the applicant for a license has the requisite "citizenship, character, financial, technical, and other qualifications."[54] Therefore, as a threshold matter, the Commission must determine whether the Applicants have the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission's rules.[55] In making this determination, the Commission, as a general rule, does not reevaluate the qualifications of transferors unless issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.[56] Foreign ownership issues are analyzed separately and are discussed in section VIII.

14. Space Exploration Holdings, LLC (SpaceX) filed a petition to deny disputing Viasat's qualifications to hold licenses. SpaceX claims that Viasat operates in the 18.8-19.3 GHz and 28.6-29.1 GHz bands in violation of the terms of its blanket earth station licenses.[57] In response, the Applicants argue that the SpaceX assertions are not transaction-specific and concern licenses that are not the subject of the instant applications.[58]

15. We note that SpaceX cites to long standing claims regarding RF interference by satellites operating under licenses already held by Viasat.[59] The Commission, however, previously has found Viasat to be a qualified licensee on a number of occasions.[60] Consistent with precedent, we reject SpaceX's approach of using claims attached to licenses already held by an applicant as a basis for questioning the qualifications of that applicant.[61] As we have explained in previous proceedings, the

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not to carry broadcast signal beyond station's primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (affirming syndicated exclusivity rules adopted pursuant to section 303(r) authority).

[53] 47 U.S.C. § 214(c); *see, e.g.*, *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5674, para. 22 (2007); *WorldCom-MCI Order*, 13 FCC Rcd at 18031-32, para. 10.

[54] *See* 47 U.S.C. §§ 308, 310(d); *T-Mobile-Sprint Order,* 34 FCC Rcd at 10596, para. 43; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24.

[55] *See* 47 U.S.C. § 310(d); 47 C.F.R. § 25.119; *T-Mobile-Sprint Order,* 34 FCC Rcd at 10597-98, paras. 43; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 24.

[56] *See, e.g., T-Mobile-Sprint Order,* 34 FCC Rcd at 10597-98, para. 45; *AT&T-DIRECTV Order*, 30 FCC Rcd at 9142, para. 25.

[57] *See* SpaceX Petition at 2, 4; *see also* SpaceX Reply; SpaceX Jan. 23, 2023 *Ex Parte* Letter; SpaceX Mar. 16, 2023 *Ex Parte* Letter.

[58] Opposition at 2-4; *see also* Viasat Feb. 7, 2023 *Ex Parte* Letter; Viasat Mar. 22, 2023 *Ex Parte* Letter.

[59] SpaceX Petition at 5.

[60] *See, e.g.*, ICFS File Nos. SES-MFS-20200204-00112 (granted Nov. 13, 2020); SES-LIC-20190919-01168 (granted Dec. 17, 2020); SES-RWL-20211012-01712 and SES-MOD-20211029-01760 (granted Nov. 1, 2021); SES-STA-20210827-01596 (granted Dec. 13, 2021); SES-RWL-20211019-01729 (granted Jan. 18, 2022).

[61] *See* Opposition at 4 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9233, para. 264 (declining to consider "a pre-existing dispute," involving "allegations that DIRECTV [was] intentionally causing harmful interference to Cox's broadband service"); *T-Mobile-Sprint Order*, 34 FCC Rcd at 10728-29 para. 340 (declining to consider T-Mobile's alleged "history of violating rural call completion rules" as "not transaction-specific"); *Applications of Level 3*

(continued….)

Commission does not favor attempts to block applications for transfers of control as a means of dealing with preexisting disputes between parties regarding licenses previously held by an acquiring applicant and not the licenses that are the subject of the pending application for transfer of control.[62] We therefore dismiss SpaceX's petition to deny.

B. Compliance with Communications Act and Commission Rules and Policies

16. In order to find that granting an application would serve the public interest, we must find that it will comply with the Act, other applicable statutes, and the Commission's rules.[63] Kuiper raises a concern that, post-merger, Viasat and Inmarsat would be in violation of the Commission rule that limits the number of applications and approvals for "unbuilt systems" a company and its affiliates may hold.[64] Kuiper notes that Inmarsat has a pending application for a V-band NGSO system, and Viasat has an authorized-but-unlaunched Ka-band and V-band NGSO system as well as a pending application to modify the authorization for that system.[65]

17. The Applicants have acknowledged this issue in their Application and have committed to "take appropriate action and seek relief as needed, consistent with the Commission's rules and orders, to ensure 'compliance with the limits within a reasonable amount of time'" after grant of the transfer of control applications, to the extent the NGSO applications remain pending at the time of the grant.[66] We agree with the parties that the unbuilt systems rule does not prevent the filing of an application for transfer of control or assignment of licenses, even if the combined entities would not meet the limits on pending applications and unbuilt stations specified in the rule upon consummation of the transaction. Moreover, the rule does not require applicants in license transfer proceedings to take any actions *prior* to Commission approval of the transfers of control.[67] However, to ensure compliance with the Commission's rules, we condition our approval on Viasat and Inmarsat taking any actions necessary concurrent with consummation of the transaction to come into compliance with or obtain relief from the provisions of section 25.159(b) of the rules.

V. POTENTIAL PUBLIC INTEREST HARMS

18. For the reasons discussed below, we find that the likelihood of the proposed transaction leading to any public interest harms is low.

Communications, Inc. for Consent to Transfer Control of Licenses and Authorizations, WC Docket No. 16-403, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9601, para. 42 (2017) (*CenturyLink-Level 3 Order*) (declining to consider allegations about "unreasonable bill payment practices" by the applicant)).

[62] *See, e.g., T-Mobile-Sprint Order,* 34 FCC Rcd at 10600, para. 50 ("The Commission does not favor attempts to use proceedings such as this one to raise issues better dealt with in alternative proceedings affording procedures more well-suited to addressing the parties' claims"); *Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations et al*., IB Docket No. 12-343 et al., Memorandum Opinion and Order, Declaratory Ruling, and Order on Reconsideration, 28 FCC Rcd 9642, 9676, para. 85 (2013) ("intercarrier compensation disputes are not merger specific, are based on arguments about prior conduct by [the subject carrier], and are more appropriately resolved through the contractual provisions between the parties or through the Commission's complaint process under section 208 of the Act.").

[63] *See, e.g., T-Mobile-Sprint Order,* 34 FCC Rcd at 10598, para. 47; *CenturyLink-Level 3 Order*, 32 FCC Rcd at 9587, para. 14; *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., To Sirius Satellite Radio Inc.,* MB Docket No. 07-57, Memorandum Opinion and Order and Report and Order, 23 FCC Rcd 12348, 12364, para. 30 (2008).

[64] 47 CFR § 25.159(b).

[65] Kuiper Comments at 4-5.

[66] Opposition at 7 (quoting Narrative at 10).

[67] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Second Order on Reconsideration, 31 FCC Rcd 9398, 9406, para. 22 (2016).

A. Competitive Effects of the Proposed Transaction

19. In this section, we consider the potential competitive harms of the proposed horizontal transaction. Horizontal transactions, such as this one, raise potential competitive concerns when the combined entity post-merger has the incentive and the ability, either unilaterally or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.[68] We focus, in particular, on market segments in which both applicants compete. Specifically, Viasat and/or Inmarsat claim to primarily serve the following product market segments: consumer broadband Internet access; commercial aviation; business aviation; maritime; energy; and government.[69]

20. Below, we present separate analyses of potential harms in the government services, aviation services, and maritime services segments. We do not consider potential harms in the consumer broadband Internet access services because Inmarsat does not compete in this segment and there is no evidence in the record that it has any plans to do so.[70]

1. Government Services

21. Many U.S. government agencies contract with satellite service providers for a variety of services. These services can be segmented into "Bulk Leasing," "Land Mobile," "Aeronautical," "Maritime," and "Handheld and Other."[71] U.S. government agencies employ satellite services both domestically and internationally and use them to communicate on land, on the sea, in the air, or in space. In the United States, federal agencies procure necessary goods and services via a complex regulatory structure that frequently involves the submission of formal or informal bids,[72] depending on the solicitation method chosen.

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[68] *See, e.g.*, *Verizon-TracFone Order*, 36 FCC Rcd at 17006, para. 34; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10611, para. 79; *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20608, para. 97. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition. U.S. Dept. of Justice and Federal Trade Commission, Horizontal Merger Guidelines (Aug. 19, 2020), § 6 at 20 (*2010 DOJ/FTC Horizontal Merger Guidelines*), https://www.justice.gov/atr/horizontal-merger-guidelines-08192010.

[69] Public Interest Supplement at 3-5.

[70] Narrative at 7; Public Interest Supplement at 3. Inmarsat routinely discusses the maritime, government, and aviation segments in its monthly reports, but does not discuss consumer broadband. *See, e.g.*, ISAT-FCC-00110697 (Inmarsat Monthly Management Report, June 2022); ISAT-FCC-00110696 (Inmarsat Monthly Management Report, May 2022).

[71] Bulk Leasing refers to leasing of raw spectrum capacity to the government. Land Mobile refers to services to land vehicles or portable devices. Maritime refers to services to vessels at sea. Aeronautical refers to services to aircraft. Handheld and Other refers to satellite phones, personal tracking devices, push-to-talk satellite radios, Wi-Fi hotspots, and other miscellaneous services. Northern Sky Research, Government and Military Satellite Communications, 19th ed. (Nov. 2022), https://www nsr.com/?research=government-and-military-satellite-communications-19th-edition; *see also* Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Viasat/Inmarsat, *No Competition Concerns in U.S. Government Mobile Satellite Communications Service: Submission to the U.S. Department of Justice Antitrust Division* at 5-7 (June 2, 2022) (Viasat/Inmarsat June 2, 2022 White Paper).

[72] *See generally* Congressional Research Service, Overview of the Federal Procurement Process and Resources, Updated April 14, 2023, https://crsreports.congress.gov/product/pdf/RS/RS22536. The Federal Acquisitions Regulations (FAR) System establishes acquisition policies and procedures for all executive agencies. 48 C.F.R. § 1.000. For some agencies, the FAR System is supplemented by agency-specific supplements. *See* Acquisitions.gov, *Federal Agencies and their Procurement Regulation Websites*, https://www.acquisition.gov/content/supplemental-regulations (last visited May 11, 2023). For an overview of the leading procurement methods in federal procurement and their prevalence, *see* Christopher R. Yukins, *The U.S. Federal Procurement System: An Introduction*, Procurement L. J., 79 (2017). For example, in sealed-bid procurement, vendors are limited to submitting formal bids which are compared on price and price-related factors. FAR 14.101(e). By contrast, in multilateral competitive negotiations, source selection can depend on the nature of the procurement. FAR 14.101(e).

22. Inmarsat asserts that three major categories of satellite service firms compete in U.S. government contracting: Satellite Network Operators (SNOs), satellite services providers (SSPs), and value-added resellers (VARs).[73] The Applicants claim that many firms compete for U.S. government satellite service contracts, including Intelsat, SES, Eutelsat, Telesat, Iridium, OneWeb, SpaceX, L3Harris, Boeing, Lockheed Martin, General Dynamics, and Northrop Grumman.[74] Separately, Inmarsat identifies defense contractors and various other firms as competitors,[75] while Viasat identifies SpaceX and Amazon Kuiper as notable entrants.[76]

23. The Applicants further argue that their market shares in the government services segment are modest[77] and that Viasat and Inmarsat do not typically compete directly with each other for U.S. government contracts.[78] The Applicants assert that Inmarsat supplies satellite communications services to U.S. government customers using L-band capabilities but there is no overlap because Viasat lacks L-band capabilities.[79] Further, the Applicants argue that while Viasat manufactures and sells equipment to U.S. government customers, Inmarsat does not.[80] The Applicants also assert that Viasat services are focused almost entirely on aeronautical applications while Inmarsat is active in all major segments.[81] Internal analysis by the Applicants indicates {[ ]} in contracts bid on from the start of 2019 through 2021.[82] The Applicants further argue that the U.S. government consists of sophisticated buyers with a variety of instruments and strong buyer power to induce more competition,[83] and that approval of this transaction will not meaningfully reduce the number of suppliers of satellite communications services available to the U.S. government.[84]

24. As noted above, Viasat reports $700 million of U.S. government revenue for the fiscal year ending March 31, 2022, comprising 25% of its total revenue.[85] However, Viasat claims that for fiscal year 2021, it derived only {[ ]} million from the sale of satellite-related services, of which {[ ]} million comprised mobile satellite communications services, with the rest consisting of "value-

[73] Inmarsat Dec. 23, 2022 RFI Narrative Response at 58. SNOs operate their own satellites, SSPs provide satellite service but may lease some of the capacity they use for their service packages, and VARs are resellers. *Id*.

[74] Public Interest Supplement at 4; *see also* Viasat/Inmarsat June 2, 2022 White Paper at 17-42.

[75] Inmarsat identifies defense contractors Airbus, Boeing, L3harris, Leonardo DRS, Lepton, Lockheed Martin, Northrop Grumman, and Raytheon. Inmarsat Dec. 23, 2022 RFI Narrative Response at 58-59, 62-63, 68-70, 72-73. Inmarsat also identifies Artel, Avanti, Cogitan, Comtech Telecommunications, Hughes, KVH, Ovzon, Peraton, Ultisat, and Xtar. Inmarsat Dec. 23, 2022 RFI Narrative Response at 60-65, 70-75.

[76] Viasat Dec. 23, 2022 RFI Narrative Response at 31.

[77] Viasat Dec. 23, 2022 RFI Narrative Response at 30; Viasat/Inmarsat June 2, 2022 White Paper at 47-48.

[78] Public Interest Supplement at 4; Viasat/Inmarsat June 2, 2022 White Paper at 43.

[79] Public Interest Supplement at 4-5. The Applicants also assert that Inmarsat supplies satellite services for U.S. government maritime programs requiring broad coverage outside of North America, but Viasat does not provide such services. *Id*.

[80] Public Interest Supplement at 4-5.

[81] Viasat/Inmarsat June 2, 2022 White Paper at 43-44. Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this item.

[82] Viasat/Inmarsat June 2, 2022 White Paper at 46-47.

[83] Viasat/Inmarsat June 2, 2022 White Paper at 48-52.

[84] Public Interest Supplement at 4-5.

[85] Viasat 2021 SEC Form 10-K at F-9.

added offerings" such as technical and operations centers.[86] As noted above, Inmarsat earned $350 million out of its $1.35 billion in 2021 revenue from U.S government services,[87] including {[ ]} million in Bulk Leasing, {[ ]} million in Land Mobile, {[ ]} million in Maritime, {[ ]} million in Aeronautical, and {[ ]} million in Handheld and Other.[88] The Applicants state that {[ ]} million of Inmarsat Aeronautical revenue is for narrowband services, and argue that Viasat is {[ ]} in narrowband service.[89]

25. *Competitive Effects.* The Applicants submitted estimates of market shares that indicate that Viasat and Inmarsat each have {[ ]}% of the overall market for U.S. government satellite services.[90] To independently determine market shares, we examined the public USASpending.gov database,[91] which contains monthly spending information from over 100 federal agencies,"[92] Based on 5,942 awards for contracts for satellite services during the five years spanning January 1, 2017 to December 31, 2022, we estimate that Viasat and Inmarsat have moderate market shares.[93] Based on

[86] Viasat Dec. 23, 2022 RFI Narrative Response at 29-30. Further, Viasat reports that {[ ]} million of the {[ ]} million came from aeronautical services, {[ ]} million came from land mobile services, and {[ ]} came from maritime services. Viasat claims {[ ]} from bulk leasing or handheld categories. *Id*. at 30; Viasat/Inmarsat June 2, 2022 White Paper at 8-11.

[87] Inmarsat, Connect BidCo Limited Annual Report and Accounts 2021 at 28, https://www.inmarsat.com/content/dam/inmarsat/corporate/documents/corporate/sustainability/how-we-do-business/annualreport/ConnectBidco_FY21_AnnualReportandAccounts_Final.pdf.coredownload.pdf.

[88] Viasat/Inmarsat June 2, 2022 White Paper at 8-9.

[89] Viasat/Inmarsat June 2, 2022 White Paper at 8.

[90] Viasat/Inmarsat June 2, 2022 White Paper at 47-48.

[91] USASpending.gov, *Advanced Search*, https://www.usaspending.gov/search (last visited May 11, 2023).

[92] USASpending.gov, *Resources: Data Sources*, https://www.usaspending.gov/data-sources (last visited May 11, 2023). Not every executive branch agency and no agency in the judicial or legislative branch is required to report on USASpending.gov. Moreover, USASpending.gov does not include "information that could compromise national security." *Id*.

[93] Specifically, we filtered for contracts in the "Satellite Telecommunications" industry and those in the most relevant service categories: North American Industry Classification System (NAICS) code 517410 (Satellite Telecommunications), and Product and Service Codes (PSCs) DD01, D304, D306, D308, D314, DA01, D302, D307, D308, D313, D318, D399, H170, H970, J070, R413, DG01, D316, DG10, D322, and DG11. The NAICS is the U.S. Census classification system for industries included in the USASpending.gov. U.S. Census, *North American Industry Classification System*, https://www.census.gov/naics/ (last visited May 11, 2023). PSCS are the U.S. government's product and service classification system included with the USASpending.gov data. Acquisition.gov, *Product and Service Code Manual* (Feb. 9, 2022), https://www.acquisition.gov/psc-manual. PSC selection was informed by contracting competitions reported by the Applicants as ones they had participated in and for which they had identification numbers, allowing linkage to the USASpending.gov data. Viasat Jan. 13, 2023 RFI Supplemental Response, Attach., ISAT-FCC-00110922; Viasat Mar. 8, 2023 RFI Further Supplemental Response, Attach., Confidential – Request 11.d RFP Data (03.08.23 Update); Inmarsat Mar. 8, 2023 RFI Response, Attach., Inmarsat Contracts Clarification – Spec 11. PSCs have been revised in recent years, so we include both the pre-revision and post-revision versions of the PSCs. For a crosswalk between pre- and post-revision PSCs, *see* NASA, *Information Specific to United States Department of Veterans Affairs (VA)* (Nov. 1, 2020), https://www.sewp nasa.gov/agencies/VA/index.shtml. Further, while USASpending.gov also contains data on sub-contracting, to avoid issues that include duplicate reporting and inconsistent reporting in these data, we looked at the prime contractor. USASpending.gov, *Sitewide Award Data Disclosures: Subaward Data Quality*, https://www.usaspending.gov/?about-the-data=subaward-data-quality (last visited May 11, 2023).

Current Total Value (all money paid in the contract to the current date),[94] Viasat has a market share of approximately 10% and Inmarsat has a market share of approximately 16%.

26. We note certain limitations, however, with these market share estimates. In particular, these shares assume that for every contract opportunity included, all the market participants were potential suppliers, which may be inaccurate. Many satellite service projects have unique technological and operational requirements, which could change the set of feasible vendors. The Applicants identify different sets of competitors in different segments and they argue that Viasat and Inmarsat have different business focuses: Viasat has a majority of sales in {[ ]}; Viasat services are focused on aeronautical applications as opposed to Inmarsat's more diverse offerings portfolio; and Inmarsat has {[ ]} narrowband services while Viasat {[ ]}.[95]

27. *Head-to-Head Competition.* While Inmarsat documents characterize Viasat {[ ]} in government services,[96] the Applicants report that after analyzing their contracting databases, they found {[ ]} of head-to-head competition in U.S. government satellite services after analyzing their contracting databases.[97] Inmarsat documents tracking government sector contracting opportunities from March 2021 to March 2022 list Viasat as a {[ ]} out of {[ ]} sole-awardee opportunities mentioned.[98] Viasat documents mention Inmarsat as a competitor mostly for {[ ]}.[99]

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[94] The USASpending.gov data also contains "Total Obligated Value" and "Total Potential Value" as measures of contract value. Total Obligated Value is all money currently allocated by government accounting to the contract. Total Potential Value is all money that could be paid in the contract if all options are exercised and the contract reached its maximum contract length. Either alternative measure yields qualitatively similar results to Current Total Value. USASpending.gov, *Resources: Data Dictionary*, https://www.usaspending.gov/data-dictionary (last visited May 11, 2023).

[95] Viasat/Inmarsat June 2, 2022 White Paper at 43-44; Viasat Apr. 7, 2023 RFI Third Further Supplemental Response, Attach., Viasat/Inmarsat, *Rapid and Ongoing Market Developments in Mobile Satcom Services Over the Course of the Division's Investigation Confirm That the Viasat-Inmarsat Transaction Will Not Substantially Lessen Competition* at 15, 19-20 (Mar. 24, 2023) (Viasat/Inmarsat Mar. 24, 2023 White Paper).

[96] ISAT-FCC-00100000 at ISAT-FCC-00100032 (Inmarsat Government Proxy Board Meeting, Mar. 5, 2020); ISAT-FCC-00100045 at ISAT-FCC-00100051 (2020-24 Long Range Business Plan: 2020 Annual Business Plan and Budget, Book Four – US Government LRBP and Budget, Feb. 2020).

[97] Viasat/Inmarsat June 2, 2022 White Paper at 46-47.

[98] ISAT-FCC-00102571 (Capture Management Opportunity Status, Aug. 20, 2021); ISAT-FCC-00102588 (Capture Management Opportunity Status & Strategy, Sept. 2021); ISAT-FCC-00103066 (Capture Management Opportunity Status, Mar. 15, 2021); ISAT-FCC-00102670 (Capture Management Opportunity Status & Strategy, Nov. 2021); ISAT-FCC-00103074 (Capture Management Opportunity Status, Apr. 28, 2021); ISAT-FCC-00103089 (Capture Management Opportunity Status, July 16, 2021), ISAT-FCC-00103106 (Capture Management Opportunity Status, Aug. 20, 2021), ISAT-FCC-00103124 (Capture Management Opportunity Status & Strategy, Oct. 15. 2021), ISAT-FCC-00103151 (Capture Management Opportunity Status & Strategy, Dec. 1, 2021), ISAT-FCC-00103182 (Capture Management Opportunity Status & Strategy, Jan. 2022), ISAT-FCC-00103213 (Capture Management Opportunity Status & Strategy, Feb. 11, 2022), ISAT-FCC-00103243 (Capture Management Opportunity Status & Strategy, Mar. 2022). Going forward, we refer to these documents jointly as the "ISAT-FCC Status & Strategy Documents." Viasat is the sole competitor to Inmarsat in {[ ]} of those opportunities. ISAT-FCC-00103243 at ISAT-FCC-00103252 (Capture Management Opportunity Status & Strategy, Mar. 2022).

[99] VIA-2R-001204244 at VIA-2R-001204264, VIA-2R-001204270, VIA-2R-001204315-16, and VIA-2R-00120436 (Viasat Government Systems: Differentiated Business Strategy Creating Market Leading Business Performance, July 2020) ({[ ]}); VIA-2R-001766225 at VIA-2R-001766342-43 and VIA-2R-001766349 (Government Systems Strategy, Nov. 12, 2021) ({[ ]}); VIASAT-VAL-001372 at VIASAT-VAL-001396-97 (Viasat Government Systems: Differentiated Business Strategy Creating Market-Leading Business Performance, Jan. 2021) ({[ ]}). (continued….)

28. In addition, contracting requirements in the government sector are often sufficiently specialized as to permit only one viable entity, and in such instances, a merger would not reduce competition. Viasat, for example, was the only bidder in every contract it won in the USASpending.gov sample used to construct market shares. Inmarsat is the only bidder in 41% of its awarded contracts in that sample based on Current Total Value.[100] Seventy-five percent of Current Total Value have only one bidder in the USASpending.gov sample.[101] In the Inmarsat documents tracking government sector opportunities, {[ ]} sole-awardee projects list no other competitor.[102]

29. *Number of Competitors.* When contracting opportunities are open to multiple competitors, we find that existing competition reduces the risk of post-transaction harm. There are currently numerous competitors in the U.S. government sector. From January 1, 2017 to December 31, 2022, the market share sample of USASpending.gov data has over 200 different contractors that have won contracts in the Satellite Telecommunications industry sector.[103] Inmarsat lists 17 firms as competitors in its narrative response.[104] In Inmarsat documents tracking government opportunities, the {[ ]} competitive projects with more than one suspected bidder have on average {[ ]} competitors.[105] Focusing on contracts with full and open competition in the USASpending.gov sample, the number of competitors ranges from 1 to 24.[106] Even when taking into account the large proportion of these contracts with only one competitor in the USASpending.gov sample, the mean number of competitors for these

VIASAT-DOJ-010501 at VIASAT-DOJ-010511-13 ({[

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[100] USASpending.gov, *Advanced Search*, https://www.usaspending.gov/search (last visited May 11, 2023).

[101] USASpending.gov data contains the "Number of Offers Received" variable, which corresponds to submitted formal bids to the contract. USASpending.gov, *Resources: Data Dictionary*, https://www.usaspending.gov/data-dictionary (last visited May 11, 2023). However, this Number of Offers Received is not always reported in the USASpending.gov data, so we supplement the data using the Federal Procurement Data System (FPDS) which is the source of the USASpending.gov data. Federal Procurement Data System, "Federal Procurement Data System," https://www fpds.gov/fpdsng_cms/index.php/en/ (last visited May 11, 2023), and Federal Procurement Data System, "FPDS-NG FAQ," https://www.fpds.gov/wiki/index.php/FPDS-NG_FAQ (last visited May 11, 2023). For some contracts, the "Number of Offers Received" is not available, so we use the "IDV Number of Offers Received" when available. Indefinite Delivery Vehicles (IDV) are contracts that allow later contracts to be arranged by the purchasing agency as needed. IDV Number of Offers refers to the number of formal bids received for the original IDV, so using this number could be overestimating the number of bidders somewhat. Federal Procurement Data System, "FPDS-Government User Manual" at 65, 157, 163-65 (Oct. 2020), https://www fpds.gov/downloads/Manuals/FPDS-NG_User_Manual_V15.pdf. We were unable to assign a number of offers to less than 0.1% of contracts by Total Current Value. Some contracts are associated with multiple Number of Offers across transactions in the FPDS so we use the median across transactions.

[102] ISAT-FCC Status & Strategy Documents. In the cited documents, the identity and number of competitors varies from month to month based on an evolving understanding by Inmarsat. Our figure relies on the last available report, as this contains the most up-to-date information.

[103] OEA staff (staff) were able to combine contractor identifiers for the most notable satellite service providers, but not all. Some contracts are doubled-counted, so we report "over 200" as our count instead of our best estimate of 241.

[104] Inmarsat Dec. 23, 2022 RFI Narrative Response at 58-75; *see also* Viasat/Inmarsat Mar. 24, 2023 White Paper at 19-20 (listing {[ ]} government sector competitors for Bulk Leasing, {[ ]} for Land Mobile, {[ ]} for Maritime, {[ ]} for Aeronautical, and {[ ]} for Handheld and Other).

[105] ISAT-FCC Status & Strategy Documents. In the cited documents, the identity and number of competitors varies from month to month based on an evolving understanding by Inmarsat. Our figures rely on the last available document reporting the opportunity in question, as this contains the most up-to-date information.

[106] USASpending.gov, *Advanced Search*, https://www.usaspending.gov/search (last visited May 11, 2023).

contracts is still 2.4 when weighted by Current Total Value.[107] As stated earlier, Viasat never faced competition in the contracts it won in the market share sample of USASpending.gov data.[108] In contracts that Inmarsat won, there were, on average, 2.0 other bidders when weighted by Current Total Value.[109]

30. *New and Potential Entry.* We also find that nascent Low Earth Orbit (LEO) and Medium Earth Orbit (MEO) competitors in satellite service are active, and becoming more active, in the government segment, and that this further lessens the likelihood of potential harms. SpaceX recently announced a new unit dedicated to U.S. military satellite services.[110] SpaceX has already signed numerous contracts with the U.S. government for satellite service from 2018 to 2023.[111] In addition, in 2022, Amazon Kuiper, together with SpaceX, won parts of a NASA satellite contract.[112] OneWeb Technologies also has several contracts with the U.S. government, including being one of the awardees of the $2.5 billion Complex Commercial SATCOM Solutions contract.[113] In 2022, OneWeb also entered into partnerships with other firms to distribute satellite service to the U.S. government.[114]

31. Based on the record before us, we find that the proposed transaction is unlikely to harm competition in government satellite services. We find that overlap between Viasat and Inmarsat is limited to certain government sub-segments, and that post-transaction, the combined company would continue to face a number of competitors in these sub-segments.

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[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] SpaceX, *Starshield*, https://www.spacex.com/starshield/ (last visited May 11, 2023); Micah Maidenberg and Drew Fitzgerald, *Elon Musk's SpaceX Courts Military With New Starshield Project*, Wall St. J. (Dec. 8, 2022), https://www.wsj.com/articles/elon-musks-spacex-courts-military-with-new-starshield-project-11670511020.

[111] *See, e.g.*, Joey Roulette, *Musk's Satellite Project Testing Encrypted Internet with Military Planes*, Reuters (Oct. 22, 2019), https://www reuters.com/article/us-spacex-starlink-airforce/musks-satellite-project-testing-encrypted-internet-withmilitary-planes-idUSKBN1X12KM; Sandra Erwin, *U.S. Army Signs Deal with SpaceX to Assess Starlink Broadband*, SpaceNews (May 26, 2020), https://spacenews.com/u-s-army-signs-deal-with-spacex-to-assess-starlink-broadband/; Michael Sheetz, *SpaceX Prepares for Air Force Test Connecting an Aircraft to Its Starlink Satellite Internet*, CNBC (Mar. 12, 2021), https://www.cnbc.com/2021/03/12/spacex-prepares-for-air-force-test-of-starlink-satellite-internet.html; Joey Roulette, Amazon, SpaceX snag NASA space communications contracts, Reuters (Apr. 20, 2022), https://www reuters.com/business/aerospace-defense/amazon-spacex-snag-nasa-space-communications-contracts-2022-04-20/; Sandra Erwin, *SpaceX Gets $1.9 Million Air Force Contract for Starlink Services in Europe and Africa*, SpaceNews (Aug. 15, 2022), https://spacenews.com/spacex-gets-1-9-million-air-force-contract-for-starlink-services-in-europe-and-africa/.

[112] Joey Roulette, *Amazon, SpaceX Snag NASA Space Communications Contracts*, Reuters (Apr. 20, 2022), https://www reuters.com/business/aerospace-defense/amazon-spacex-snag-nasa-space-communications-contracts-2022-04-20/.

[113] Oneweb Technologies, *Contract Vehicles*, https://onewebtechnologies.net/commercial-satcom-solutions/ (last visited May 11, 2023).

[114] Charles Lyons-Burt, *Hughes Teams with OneWeb to Deliver LEO SATCOM Data to DOD; Rick Lober Quoted*, Executive Gov (Apr. 5, 2022), https://executivegov.com/2022/04/hughes-teams-with-oneweb-to-deliver-leo-satcom-data-to-dod-rick-lober-quoted/; Ultisat, *UltiSat Continues Product Expansion Strategy by Signing Distribution Agreement with OneWeb Technologies for LEO Based Satellite Connectivity* (Apr. 26, 2022), https://ultisat.com/newsroom/ultisat-continues-product-expansion-strategy-by-signing-distribution-agreement-with-oneweb-technologies-for-leo-based-satellite-connectivity/.

2. Aviation Services

32. As discussed by the Applicants,[115] in-flight data and voice communications services (in-flight connectivity services or IFC services)[116] are sold to two different types of aviation customers: (1) commercial aviation; and (2) business aviation customers. IFC services are the main segment of aviation services in which the Applicants compete against each other.[117] For purposes of evaluating this transaction, we examine the effect of the transaction on IFC services provided on flights that originate, terminate, or otherwise stop in the United States, including domestic-focused and international-focused flights. We consider the role of all providers of IFC services, including SNOs (that operate their own satellites), SSPs (that provide satellite services and also lease additional capacity), and VARs (that resell IFC services produced by another provider). The Applicants are SSPs; they provide their own IFC services, lease capacity, and sell their IFC services directly to aviation customers, as well as to value-added resellers.[118]

33. *Commercial Aviation.* The Applicants argue that the proposed transaction will not meaningfully reduce competition for the provision of IFC services to commercial airlines serving routes that originate and/or terminate in the United States. The Applicants argue that their current aviation services do not substantially overlap and, in particular, they assert that Viasat provides IFC services for commercial aviation mainly to U.S. commercial airlines serving U.S.-domestic or intra-North American routes, while Inmarsat prioritizes global coverage over higher data speeds.[119] The Applicants point out that Inmarsat to date, has not been successful in winning any bids and thus does not provide IFC services to any U.S. airline.[120] In further support of their arguments that the Applicants do not compete on North American routes, the Applicants cite a market analyst's estimate that the market shares of Viasat and Inmarsat for commercial aviation IFC in North America in 2021 were {[ ]}%, respectively.[121]

34. We find that the proposed transaction is unlikely to result in competitive harms in the market for the provision of IFC services on commercial flights serving domestic routes in the United States. As noted by the Applicants, currently Inmarsat has not been successful in winning any bids in the provision of IFC services to U.S. commercial airlines.[122] Inmarsat believes that it failed to win commercial IFC business in the United States because {[

[115] Public Interest Supplement at 3.

[116] IFC services may include, but are not limited to, Internet access, streaming content, voice, and cockpit communication and safety-of-flight services. Viasat Dec. 23, 2022 RFI Narrative Response at 15-16, 19; Inmarsat Dec. 23, 2022 RFI Narrative Response at 14-15.

[117] Public Interest Supplement at 3.

[118] Narrative at 2; Public Interest Supplement at 3; Viasat Dec. 23, 2022 RFI Narrative Response at 17, 20; Inmarsat Dec. 23, 2022 RFI Narrative Response at 8, 14; Euroconsult, Prospects for In-Flight Entertainment and Connectivity at 62, 71-72, 74, 110 (2021).

[119] Narrative at 7; Viasat Dec. 23, 2022 RFI Narrative Response at 5-6, 17-18; Inmarsat Dec. 23, 2022 RFI Narrative Response at 7.

[120] Public Interest Supplement at 3; Narrative at 8; Viasat Dec. 23, 2022 RFI Narrative Response at 16-17; Inmarsat Dec. 23, 2022 RFI Narrative Response at 8; Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Letter from Jason D. Cruise, Latham & Watkins LLP, and Michael L. Weiner, Steptoe & Johnson LLP, to Alexis Lazda, U.S. DOJ, Antitrust Division, and Alvin Chu, U.S. DOJ, Antitrust Division at 2 (Jan. 21, 2022) (Applicants' Jan. 21, 2022 Letter to DOJ).

[121] Viasat Dec. 23, 2022 RFI Narrative Response at 16. Market shares are based on the number of active connected aircraft.

[122] Viasat/Inmarsat Mar. 24, 2023 White Paper at 2; Viasat Dec. 23, 2022 RFI Narrative Response at 6, 16; Applicants' Jan. 21, 2022 Letter to DOJ at 2.

]}.[123] Inmarsat attempted to address these concerns through a partnership with Hughes Network Systems, which allowed Inmarsat to utilize Hughes Network Systems' satellite capacity over the continental United States.[124] However, Inmarsat claims that the {[

]}.[125] In addition, there are many other providers of IFC services on commercial flights serving the United States, including Anuvu, Intelsat, Panasonic Avionics, and Thales.[126]

35. We further find that the proposed transaction is unlikely to result in competitive harms with respect to the provision of IFC services on international flights originating or terminating in the United States. Viasat reports that its market share of intercontinental flights that have a U.S. origin or destination was {[ ]}% in 2021.[127] Inmarsat's global share of all in-service, IFC-connected commercial aircraft as of the first quarter of 2021 was approximately {[ ]}%.[128] More importantly, there are many other providers of IFC services on international flights originating or terminating in the United States, including Anuvu, Intelsat, Panasonic Avionics, and Thales.[129]

36. In addition, we find that current and future entry of LEO operators into the market for the provision of IFC services on commercial flights will increase competition in this market segment.[130] OneWeb and Starlink (SpaceX) have launched LEO satellite networks that increase the capacity and coverage available for IFC services,[131] and that are expected to have a significant downward effect on capacity prices.[132] OneWeb has signed agreements with Intelsat and Panasonic Avionics for Intelsat and Panasonic Avionics to sell OneWeb's LEO satellite services to airlines worldwide.[133] Starlink has either

[123] ISAT-FCC-00106692 at ISAT-FCC-00106693 (IFC NORAM Market Update, May 2021); Inmarsat Dec. 23, 2022 RFI Narrative Response at 45.

[124] Press Release, Inmarsat, Inmarsat and Hughes Bring Unrivalled Inflight Connectivity to North American Airlines and Passengers (Oct. 20, 2020), https://www.inmarsat.com/en/news/latest-news/aviation/2020/inmarsat-and-hughes-bring-unrivalled-inflight-connectivity-to-no html; ISAT-FCC-00108737 at ISAT-FCC-00108738 (Strategic Collaboration Agreement, Oct. 2020); ISAT-FCC-00106692 at ISAT-FCC-00106693 (IFC NORAM Market Update, May 2021); Inmarsat Dec. 23, 2022 RFI Narrative Response at 45; Applicants' Jan. 21, 2022 Letter to DOJ at 2.

[125] Inmarsat Dec. 23, 2022 RFI Narrative Response at 45.

[126] Public Interest Supplement at 3; Viasat Dec. 23, 2022 RFI Narrative Response at 16; VIA-2R-000637283 (Valour Consultancy Commercial Aviation Data, June 2021).

[127] Viasat Dec. 23, 2022 RFI Narrative Response at 18. Viasat does not specify whether these market share data are based on the number of connected aircraft or some other measure.

[128] VIA-2R-000637283 (Valour Consultancy Commercial Aviation Data, June 2021). We note that this is likely an overestimate of its share of intercontinental flights that have a U.S. origin or destination.

[129] Based on staff analysis of documents and data submitted by the Applicants, including VIA-2R-001450967 (Valour Consultancy Commercial Aviation Data, Jan. 2022), along with data obtained from external sources.

[130] *See, e.g.*, Viasat/Inmarsat Mar. 24, 2023 White Paper at 9; Applicants' Jan. 21, 2022 Letter to DOJ at 3-4.

[131] Inmarsat Dec. 23, 2022 RFI Narrative Response at 28, 38-39; s*ee also* Euroconsult, Prospects for In-Flight Entertainment and Connectivity at 57 (2021) (Euroconsult).

[132] *See, e.g.*, Euroconsult at 57.

[133] OneWeb, *Intelsat and OneWeb partnership brings multi-orbit connectivity to airlines worldwide* (Aug. 11, 2022), https://oneweb.net/resources/intelsat-and-oneweb-partnership-brings-multi-orbit-connectivity-airlines-worldwide; Intelsat, *Intelsat and OneWeb partnership brings multi-orbit connectivity to airlines worldwide* (Aug. 11, 2022), https://www.intelsat.com/newsroom/intelsat-and-oneweb-partnership-brings-multi-orbit-connectivity-to-airlines-worldwide/; OneWeb, *OneWeb and Panasonic Avionics Corporation to deliver low Earth orbit (LEO) connectivity to airlines worldwide* (Oct. 17, 2022), https://oneweb net/resources/oneweb-and-panasonic-avionics-

(continued….)

begun or will begin providing IFC services to a number of commercial airlines including {[ ]}, Hawaiian Airlines, JSX, airBaltic, and Zipair.[134]

37. *Business Aviation.* The Applicants argue that the proposed transaction will not result in competitive harm for the provision of IFC services to U.S. business aviation customers.[135] They assert that Viasat and Inmarsat had estimated shares of {[ ]}% and {[ ]}%, respectively, of North American business aviation broadband IFC services customers in 2021.[136] They further claim that many business aircraft served by Inmarsat cannot be served by the Viasat Ka-band terminals employed for commercial aircraft.[137] Finally, they assert that the provision of IFC services for business aviation is highly competitive.[138]

38. We find that the proposed transaction is unlikely to result in competitive harms to the provision of IFC services on business flights serving the United States. In this segment, Gogo, Iridium, and Inmarsat have the largest presence with market shares of {[ ]}%, while Viasat has a *de minimis* market presence.[139] We note that in this segment, VARs provide value-added services that business aviation customers require, and as such control access to these customers.[140] Further, and similarly to commercial aviation, we find that current and future entry of LEO operators into the provision of IFC services in business aviation will likely increase competition. For example, Gogo and OneWeb announced a partnership in 2022 which will allow Gogo to utilize OneWeb's LEO network to provide global IFC service to business flights.[141] OneWeb has also partnered with Satcom Direct, a

corporation-deliver-low-earth-orbit-leo-connectivity; Panasonic, *OneWeb and Panasonic Avionics Corporation to Deliver Low Earth Orbit (LEO) Connectivity to Airlines Worldwide* (Oct. 18, 2022), https://www.panasonic.aero/press-release/panasonic-leo/.

[134] Viasat/Inmarsat Mar. 24, 2023 White Paper at 7-8; Hawaiian Airlines, *Hawaiian Airlines to Offer Free, High-Speed Starlink Internet Connectivity on Transpacific Fleet* (Apr. 25, 2022), https://newsroom.hawaiianairlines.com/releases/hawaiian-airlines-to-offer-free-high-speed-starlink-internet-connectivity-on-transpacific-fleet; Mary Kirby, *SpaceX's Starlink inflight Internet now active on JSX jet*, Runway Girl Network (Dec. 13, 2022), https://runwaygirlnetwork.com/2022/12/spacex-starlink-jsx-jet/; airBaltic, *airBaltic to equip entire fleet with SpaceX's Starlink* (Jan. 10, 2023), https://www.airbaltic.com/en/airbaltic-to-equip-entire-fleet-with-spacex-starlink; ZIPAIR, *ZIPAIR to become the first airline in Asia to work with SpaceX to Provide Innovative High-Speed, Low-Latency Internet in the Skies* (Jan. 30, 2023), https://www.zipair net/en/notification/151.

[135] Public Interest Supplement at 3.

[136] Viasat Dec. 23, 2022 RFI Narrative Response at 21. Market shares are based on the number of connected business aircraft, but it is unclear if the shares are based only on U.S. airlines or on all airlines that serve the United States.

[137] Viasat Dec. 23, 2022 RFI Narrative Response at 20; Public Interest Supplement at 4.

[138] Public Interest Supplement at 3; Inmarsat Dec. 23, 2022 RFI Narrative Response at 16.

[139] Viasat Dec. 23, 2022 RFI Narrative Response at 21. Market shares are based on the number of connected business aircraft, but it is unclear if the shares are based only on U.S. airlines or on all airlines that serve the United States. Further, even if we consider solely the provision of IFC services on international, business flights serving North America, we find that the proposed transaction is unlikely to result in competitive harms. Excluding ATG providers on the basis that they cannot provide IFC service on transoceanic flights, we estimate the market shares of Iridium, Inmarsat, and Viasat to be {[ ]}%, respectively.

[140] According to Viasat, prominent value-added resellers such as Satcom Direct, Honeywell Forge, and Collins ARINCDirect have achieved a {[ ]}. VIA-2R-000720150 at VIA-2R-000720150 (Business Aviation – Global Sales Strategy, Oct. 2021).

[141] Viasat/Inmarsat Mar. 24, 2023 White Paper at 13; OneWeb, *OneWeb partners with Gogo Business Aviation to revolutionise in-flight connectivity for business jet users worldwide* (May 23, 2022), https://oneweb net/resources/oneweb-partners-gogo-business-aviation-revolutionise-flight-connectivity-business-jet.

prominent VAR, to allow Satcom Direct to market and sell OneWeb's inflight broadband services.[142] Further, Starlink has plans to provide IFC services to private jets.[143]

39. Based on the record before us, we find few concerns about competitive harms resulting from the transaction with respect to either commercial aviation or business aviation. Given limited overlap between the Applicants, as well as the likelihood of increased competition from nascent entities and new entrants, we believe that any price effects would be low.

3. Maritime and Energy Services

40. Maritime communications services consist of communications services to mobile vessels, including merchant, passenger, leisure and fishing vessels, as well as to fixed offshore sites.[144] The Applicants explain that, whereas Inmarsat offers service to many maritime customers globally using its Ka-band and L-band networks, Viasat only has a small presence in the provision of services to mobile vessels.[145] Moreover, the Applicants claim that, while Viasat serves offshore drilling rigs and production platforms, Inmarsat only has a limited offshore energy service presence through its provision of services to offshore support vessels.[146]

41. Inmarsat asserts that maritime services may also be divided into high-bandwidth, high-capacity broadband products and narrowband products consisting of low-frequency, low-bandwidth, low-throughput connectivity.[147] It notes that Inmarsat uses the L-band to provide narrowband services and that Viasat does not provide narrowband service to maritime customers.[148] Viasat claims that its existing Ka-band network currently is ill-suited for most maritime applications and that the company lacks global coverage required to ensure connectivity in ocean shipping lanes.[149] The Applicants assert there is competition from satellite, submarine cable and mobile broadband providers,[150] including Marlink, KVH, MarineSat, NSSL Global, Satcom Global, Speedcast, Navarino, Orange, OTE, Telenor, SES, Anuvu, AST, and others.[151]

42. Maritime comprises a large part of Inmarsat's global business. We estimate that maritime accounts for 37% of its 2021 global revenue, or approximately $500 million.[152] However,

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[142] Satcom Direct, *Satcom Direct, OneWeb, and QEST ratify development of Electronic Phased Array antenna together* (May 23, 2022), https://www.satcomdirect.com/news/sd-plane-simple-partnership-flat-panel/.

[143] Joey Roulette, *SpaceX rolls out Starlink internet service for private jets*, Reuters (Oct. 19, 2022), https://www reuters.com/technology/spacex-rolls-out-starlink-internet-service-private-jets-2022-10-19/.

[144] Public Interest Supplement at 4; Viasat Dec. 23, 2022 RFI Narrative Response at 26.

[145] Public Interest Supplement at 4.

[146] *Id.*

[147] Inmarsat Dec. 23, 2022 RFI Narrative Response at 48.

[148] Inmarsat Dec. 23, 2022 RFI Narrative Response at 48; *see also* Viasat Dec. 23, 2022 RFI Narrative Response at 26.

[149] Viasat Dec. 23, 2022 RFI Narrative Response at 26.

[150] *See, e.g.*, Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Letter from Jason D. Cruise, Latham & Watkins LLP, and Michael L. Weiner, Steptoe & Johnson LLP, to Alvin Chu, U.S. DOJ, Antitrust Division at 2-3 (Jan. 26, 2022) (Applicants' Jan. 26, 2022 Letter to DOJ) (*see* Table 1 and Competitive Landscape chart, which, in addition to {[

]}.).

[151] Inmarsat Dec. 23, 2022 RFI Narrative Response at 51-53; Viasat Dec. 23, 2022 RFI Narrative Response at 27.

[152] Inmarsat, Connect BidCo Limited Annual Report and Accounts 2021 at 28, https://www.inmarsat.com/content/dam/inmarsat/corporate/documents/corporate/sustainability/how-we-do-business/annualreport/ConnectBidco_FY21_AnnualReportandAccounts_Final.pdf.coredownload.pdf ("[Maritime] (continued….)

Applicants' documents show that, in North America in most maritime segments, both Inmarsat and Viasat have either a limited presence or do not compete with one another. Because, as we noted above, Viasat does not offer narrowband service to maritime customers, the Applicants only compete in the provision of maritime broadband connectivity.[153]

43. In 2021, Inmarsat provided broadband connectivity to only {[ ]} North American vessels across the merchant, passenger, leisure, and fishing categories, with {[ ]} of these being merchant or fishing vessels, which Viasat does not serve.[154] Similarly, the Applicants' documents indicate that Viasat provided communication service to only {[ ]} leisure and passenger vessels, with North American revenues of approximately {[ ]} million.[155] The Applicants each also provide connectivity to a limited number of offshore support vessels serving the United States, with Viasat and Inmarsat, respectively, serving {[ ]} and {[ ]} vessels.[156] This is in comparison to the over ten thousand broadband connected North American maritime vessels in 2021.[157] Aggregating across the various classes of vessels, the Applicants' combined share of North American broadband connected vessels is extremely small, approximately {[ ]}%, and we conclude that the proposed transaction would not have a significant impact on competition in this market segment. Inmarsat's internal documents provide additional evidence that competition between the Applicants to serve maritime vessels is limited.[158]

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revenue continued to stabilise, increasing by 3.2% ($15.5m)," which we convert to an annual revenue figure as follows: $500 million = $15.5 million + $15.5 million / 3.2%. To obtain the maritime proportion relative to total revenue, staff divide $500 million by Inmarsat's 2021 reported revenue of $1.35 billion.); *see also* Inmarsat Dec. 23, 2022 RFI Narrative Response at 48.

[153] Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Letter from Jason D. Cruise, Latham & Watkins LLP, and Michael L. Weiner, Steptoe & Johnson LLP, to Alvin Chu, U.S. DOJ, Antitrust Division at 2 (Mar. 30, 2022) (Applicants' Mar. 30, 2022 Letter to DOJ); Viasat/Inmarsat Dec. 5, 2022 RFI Response, Attach., Viasat/Inmarsat, *Relevant Services" in the Second Request, Presentation to Department of Justice, Antitrust Division* at 4 (Mar. 28, 2022) (Viasat/Inmarsat Mar. 28, 2022 Presentation).

[154] Inmarsat Dec. 23, 2022 RFI Narrative Response at 48; Viasat Dec. 23, 2022 RFI Narrative Response at 26; Applicants' Mar. 30, 2022 Letter to DOJ at 1-2.

[155] Applicants' Mar. 30, 2022 Letter to DOJ at 1-2; *see also* Viasat/Inmarsat Mar. 28, 2022 Presentation at 4; VIA-2R-001040555 at VIA-2R-001040557 (Maritime Strategy, Global Enterprise & Mobility, Aug. 24, 2021). Viasat did not formally launch its maritime business until November of 2020. Although Viasat sought to expand maritime services, it acknowledged that it was a nascent competitor {[ ]}. By comparison, Viasat viewed {[ ]}. VIA-2R-001040555 (Maritime Strategy, Global Enterprise & Mobility, Aug. 24, 2021); VIA-2R-000001750 at VIA-2R-000001758 (Board of Directors, Strategic Plan FY22-26 Update, Dec. 2020); *see also* Viasat, *Viasat and Cobham Satcom Announce Strategic Collaboration on Maritime Connectivity System Ahead of ViaSat-3* (Nov. 10, 2022), https://news.viasat.com/blog/gem/viasat-and-cobham-satcom-announce-strategic-collaboration-on-maritime-connectivity-system-ahead-of-viasat-3.

[156] Viasat/Inmarsat Mar. 28, 2022 Presentation at 7.

[157] This figure consists of approximately {[ ]} merchant, passenger, leisure, and fishing vessels and approximately {[ ]} offshore support vessels. Applicants' Mar. 30, 2022 Letter to DOJ at 1; Viasat/Inmarsat Mar. 28, 2022 Presentation at 7. The aggregate number of offshore support vessels does not account for vessels buying cellular service. We note, however, that it is unclear that excluding mobile coverage overstates the Applicants' market shares because both Viasat and Inmarsat have partnered with other service providers to offer LTE-based service. *See, e.g.*, Press Release, T-Mobile, T-Mobile Lights Up LTE in the Gulf of Mexico – Another Un-carrier First (July 24, 2019), https://www.t-mobile.com/news/press/lte-in-gulf-of-mexico; Press Release, Inmarsat, Inmarsat Fleet LTE Service Coverage Extended to Gulf of Mexico Following Successful Trials with V.Ships Offshore (Sept. 24, 2020), https://www.inmarsat.com/en/news/latest-news/maritime/2020/inmarsat-fleet-lte-service-coverage-extended-to-gulf-of-mexico-f html.

[158] Inmarsat documents {[

(continued….)

44. The Applicants likewise largely do not compete to serve fixed offshore sites in the energy segment. Viasat competes in this segment through its acquisition of RigNet, which primarily serves fixed sites like offshore drilling rigs and production platforms that require high bandwidth.[159] By contrast, when Inmarsat sold RigNet in 2014, it divested substantially all of its retail energy broadband assets.[160] Further, RigNet's records show that Inmarsat is not a meaningful competitor to Viasat's energy business.[161] The energy segment is also facing increasing competition from nascent LEO and MEO competitors. For example, OneWeb and Tampnet have signed a Memorandum of Understanding to evaluate network capabilities in the offshore energy environment.[162] Starlink, which has begun offering maritime communications services globally,[163] has contracted with offshore companies and VARs serving the offshore segment.[164]

45. Based on the record, we find that the Applicants do not compete in most segments of maritime communications services. Where the Applicants do compete, they generally have a small market presence, and face competition from existing service providers using different technologies. In addition, we find that the Applicants face increasing competition from nascent and new service providers.

]}. *See, e.g.*, ISAT-FCC-00103608 at ISAT-FCC-00103608-10 (MBU Growth Strategy, Strategic Growth Options and Tools, May 28, 2021) ({[

]}); ISAT-FCC-00100116 at ISAT-FCC-00100122, ISAT-FCC-00100148 (Monthly Management Report, Jan. 2021); ISAT-FCC-00100409 at ISAT-FCC-00100441 (Monthly Management Report, Feb. 2021); ISAT-FCC-00110506 at ISAT-FCC-00110512 (Monthly Management Report, Mar. 2022); ISAT-FCC-00110696 at ISAT-FCC-00110702, ISAT-FCC-00110721 (Monthly Management Report, May 2022); ISAT-FCC-00111834 at ISAT-FCC-00111840 (Monthly Management Report, July 2022); ISAT-FCC-00112038 at ISAT-FCC-00112044 (Monthly Management Report, Aug. 2022) (discussing {[

]}). Internal Inmarsat documents indicate that Inmarsat views {[ ]}. ISAT-FCC-00100116 at ISAT-FCC-00100122 (Monthly Management Report, Jan. 2021); *see also* ISAT-FCC-00112650 at ISAT-FCC-00112656 (Monthly Management Report, Nov. 2022). However, Inmarsat also notes {[ ]}. *See, e.g.*, ISAT-FCC-00110696 at ISAT-FCC-00110736 (Monthly Management Report, May 2022) ({[

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[159] Press Release, Viasat, Viasat Completes Acquisition of RigNet (Apr. 30, 2021), https://investors.viasat.com/news-releases/news-release-details/viasat-completes-acquisition-rignet; Public Interest Supplement at 4.

[160] Press Release, Inmarsat, Inmarsat Completes Sale of Inmarsat Retail Energy Operations to RigNet (Feb. 3. 2014), https://www.inmarsat.com/en/news/latest-news/corporate/2014/6922.html; Applicants' Jan. 26, 2022 Letter to DOJ at 2.

[161] Applicants' Jan. 26, 2022 Letter to DOJ at 2 ({[

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[162] Press Release, Tampnet, Tampnet and OneWeb sign agreement to further develop the next generation of offshore connectivity capabilities (Oct. 27, 2021), https://www.tampnet.com/press/tampnet-and-oneweb-sign-agreement-to-further-develop-the-next-generation-of-offshore-connectivity-capabilities.

[163] *See, e.g.*, ISAT-FCC-00112446 at ISAT-FCC-00112452 (Inmarsat Monthly Management Report, Oct. 2022); ISAT-FCC-00113046 at 7 (Inmarsat Monthly Management Report, Jan. 2023).

[164] *See, e.g.*, Nadja Skopljak, *Solstad vessels to trial Starlink connectivity* (Jan. 11, 2023), https://www.offshore-energy.biz/solstad-vessels-to-trial-starlink-connectivity/; Castor Marine, *Starlink is a High-speed, low-latency internet with up to 350/40Mbps while at sea*, https://castormarine.com/starlink (last visited May 11, 2023).

VI. POTENTIAL PUBLIC INTEREST BENEFITS

46. We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits. As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, such as giving the merged firm greater spectrum density and diversity, as well as service enhancements and certain other efficiencies. Because of these anticipated benefits, we find that overall the transaction is in the public interest.

47. The Commission has recognized that efficiencies generated through a transaction can mitigate competitive harms "if such efficiencies enhance the merged firm's ability and incentive to compete and therefore result in lower prices, improved quality, enhanced service or new products."[165] The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighted against potential harms. First, the claimed benefit must be transaction-specific—meaning it naturally arises as a result of the transaction and likely could not be accomplished in the absence of the transaction.[166] Second, the claimed benefit must be verifiable.[167] Because much of the information relating to the potential benefits of a transaction is in the sole possession of the Applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude.[168] Third, the Commission is more likely to find marginal cost reductions to be cognizable than reductions in fixed cost as, in general, reductions in marginal cost are more likely to result in lower prices for consumers.[169] In addition, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.[170] Finally, the Commission applies a "sliding scale approach" to evaluating benefit claims.[171] Under this sliding scale approach, where potential harms appear both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand. On the other hand, where potential harms appear less likely and less substantial, the Commission will accept a lesser showing.[172]

48. The Applicants generally contend that a combined Viasat and Inmarsat will enable Viasat-Inmarsat to offer more valuable satellite services and better compete for customers than either firm

[165] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214.

[166] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 273; *2010 DOJ/FTC Horizontal Merger Guidelines*, § 10 at 29-31.

[167] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 274.

[168] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10671-72, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 274. In addition, "the magnitude of benefits must be calculated net of the cost of achieving them."

[169] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17025, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10672, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237-38, para. 275.

[170] *See, e.g.*, *Verizon-TracFone Order,* 36 FCC Rcd at 17026, para. 73; *T-Mobile-Sprint Order*, 34 FCC Rcd at 10672, para. 214; *AT&T-DIRECTV Order*, 29 FCC Rcd at 9237, para. 274.

[171] *See, e.g.*, *AT&T-DIRECTV Order*, 29 FCC Rcd at 9238, para. 276; *see also CenturyLink-Level 3 Order*, 32 FCC Rcd at 9586, para. 11 & n.36.

[172] *See, e.g.*, *AT&T-DIRECTV Order*, 29 FCC Rcd at 9238, para. 276; *cf. 2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31.

could on a standalone basis.[173] The Applicants contend that public benefits will arise from: (1) reductions in satellite capacity fees paid to third parties, thereby reducing the marginal costs of delivering satellite services and eliminating double marginalization; (2) greater spectrum diversity and density of coverage; (3) additional satellite capacity; (4) service innovations and service-quality improvements; (5) enhanced competitive position of Viasat-Inmarsat; and (6) other efficiencies.

49. *Reductions in Third-Party Satellite Fees and Elimination of Double Marginalization.* The Applicants argue that the combination of Viasat's and Inmarsat's satellite networks will eliminate double marginalization, resulting in a substantial reduction of incremental network costs to serve the combined Viasat-Inmarsat's customers.[174] Inmarsat claims that it spent {[ ]} million for third-party capacity to support its U.S. government business across its network in 2021 and is forecast to spend {[ ]} million for third-party capacity in 2023 to support its commercial business.[175] Viasat explains that "[b]y reducing its spending on third-party capacity, the combined company will be able to lower its marginal costs, a benefit that . . . can be expected to translate into lower prices for customers."[176] Viasat asserts that it "currently pays nearly {[ ]} million annually to augment its own satellite capacity with third-party capacity for aviation and U.S. government-related usage."[177] As of March 2023, Viasat states, "Currently, the parties spend a combined {[ ]} million annually to third parties for additional satellite capacity."[178]

50. Where a merger involves a vertical component and the upstream and downstream entities enjoy some market power, the vertical integration resulting from the merger may reduce downstream prices, because the merged entity, in setting the downstream price, will consider the true economic marginal cost of the input rather than the higher price (including upstream profit margin) charged by the non-integrated firm pre-merger.[179] Here, however, the Applicants have neither demonstrated the upstream and downstream price-cost margins, nor have they presented any estimate of the pass-through rates downstream.[180] In addition, the Applicants failed to consider whether the up-stream true economic marginal cost includes the opportunity cost of not selling the upstream capacity to independent downstream competitors.[181] Consequently, we will not credit this claimed benefit.

51. *Greater Spectrum Density and Diversity.* The Applicants assert that combining Viasat's and Inmarsat's satellite constellations offers efficiencies beyond cost reductions, namely more resilient,

[173] The Applicants assert, "By facilitating the combined company's provision of new and enhanced services, the Proposed Transaction will allow it to compete more effectively in the already robustly competitive marketplace." Narrative at 9; *see also* Inmarsat Dec. 23, 2022 RFI Narrative Response at 4, 5, 8; Viasat Dec. 23, 2022 RFI Narrative Response at 7, 11, 12.

[174] Inmarsat Dec. 23, 2022 RFI Narrative Response at 10; Viasat Dec. 23, 2022 RFI Narrative Response at 8-9.

[175] Inmarsat Dec. 23, 2022 RFI Narrative Response at 10.

[176] Viasat Dec. 23, 2022 RFI Narrative Response at 8-9.

[177] *Id.* at 9.

[178] Viasat/Inmarsat Mar. 24, 2023 White Paper at 26.

[179] *See General Motors Corp. Hughes Electronics Corp., and The News Corp. Ltd.*, MB Docket No. 03-124, Memorandum Opinion & Order, 19 FCC Rcd 473, 507 para. 70 (2004) (*News-Hughes Order*); Patrick Rey & Thibaud Verge, *Economics of Vertical Restraints*, Handbook of Antitrust Economics 353, 360 (Paolo Buccirossi, ed., 2008).

[180] *See, e.g.*, *News-Hughes Order*, 19 FCC Rcd at 507, para. 70 & n.223 (noting that the degree of the benefit of the elimination of double marginalization will depend crucially on the elasticity of demand for the downstream product).

[181] *See, e.g.*, Carl Shapiro, *Vertical Mergers and Input Foreclosure Lessons from the AT&T/Time Warner Case,* 59 Rev. Ind Org. 303, 325 (2021) (explaining that the true economic marginal cost must account for "opportunity cost and must account for other factors, such as limited upstream capacity").

robust, and uniform satellite coverage across the globe.[182] For example, although Viasat claims vast experience with L-band technology and services,[183] Viasat currently lacks L-band satellite capacity of its own.[184] Inmarsat claims that it will provide Viasat with satellites that supply L-band capacity and that combining Inmarsat's L-band capacity with Viasat's existing business will enable the combined company "to offer a more valuable solution with a better set of capabilities to its customers."[185] Among the advantages of using the L-band are its better propagation characteristics, which means that it is favored by the maritime community,[186] and the fact that it uses smaller antennas, which makes them particularly well-suited for tactical and mobile operation.[187] For these reasons, L-band antennas are used in various safety applications, including flight tracking; critical voice communication; restoring communications after natural disasters; medical evacuation; and in-flight transmission of critical patient data.[188] Adding L-band to its portfolio of services is, therefore, one way in which Viasat-Inmarsat might provide more resilient, robust coverage, particularly to first responders, emergency medical services and other user communities that value resilience, robustness, and reliability. Viasat adds that it "plans to use Inmarsat's satellites to create a new hybrid model that will incorporate L-band capacity and service both broadband and narrowband applications."[189] We find that the greater spectrum density and diversity flowing from this merger is a cognizable public interest benefit.

52. *Additional Satellite Capacity.* The Applicants argue that the proposed transaction "will result in network and service quality synergies that will enable the combined entity to better meet customer demands,"[190] including the needs of business aviation IFC and the U.S. government

[182] Inmarsat Dec. 23, 2022 RFI Narrative Response at 7-8; Viasat Dec. 23, 2022 RFI Narrative Response at 4-6; Viasat/Inmarsat Mar. 24, 2023 White Paper at 25.

[183] Viasat, *L-band: A Viasat technology quietly making a difference* (Mar. 29, 2019), https://news.viasat.com/blog/scn/l-band-a-viasat-technology-quietly-making-a-difference; *see also* VIA-2R-004588620 at VIA-2R-004588624 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[184] *See* FCC, Approved Space Station List, https://www.fcc.gov/approved-space-station-list (last visited May 11, 2023).

[185] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6; *see also* VIA-2R-002735777 at VIA-2R-002735794-95 (Connecting the World, JP Morgan HY Conference, Mar. 2022); VIA-2R-004348666 at VIA-2R-004348674 (Connecting the World, Nov. 2021).

[186] Axess Networks, *L-Band Satellite Frequency: Countless Advantages For Satellite Communication* (Sept. 17, 2019), https://axessnet.com/en/l-band-satellite-frequency-countless-advantages-for-satellite-communication/; Cobham, *What is L-band?*, https://sync.cobham.com/satcom/knowledge-library/getting-started-on-satellite-communications/what-is-l-band/ (last visited May 11, 2023); *see also* VIA-2R-004348666 at VIA-2R-004348674 (Connecting the World, Nov. 2021).

[187] The tradeoff with the higher frequencies is that, while they grant the initial possibility of carrying more information, they need more power to avoid blockages and larger, heavier antennas. Axess Networks, *L-Band Satellite Frequency: Countless Advantages For Satellite Communication* (Sept. 17, 2019), https://axessnet.com/en/l-band-satellite-frequency-countless-advantages-for-satellite-communication.

[188] Viasat, *L-band: A Viasat technology quietly making a difference* (Mar. 29, 2019), https://news.viasat.com/blog/scn/l-band-a-viasat-technology-quietly-making-a-difference.

[189] Viasat Dec. 23, 2022 RFI Narrative Response at 11.

[190] Viasat Dec. 23, 2022 RFI Narrative Response at 6; *see also* VIA-2R-002735777 at VIA-2R-002735802 (Connecting the World, JP Morgan HY Conference, Mar. 2022); VIA-2R-004588620 at VIA-2R-004588627, VIA-2R-004588630-31, VIA-2R-004588637 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021); ISAT-FCC-00107243 at ISAT-FCC-00107247 (Barclays, Project Norman, Avascent Call, Jan. 13, 2021); ISAT-FCC-00107956 at ISAT-FCC-00107960 ("Sam" and "Norman" Comparison, June 3, 2021); ISAT-FCC-00107233 (Barclays, Project Norman Synergies, Jan. 2021); ISAT-FCC-00107772 (Project Norman Pros & Cons, no date available); ISAT-FCC-00108086 (Norman Synergies email, Sept. 7, 2021); ISAT-

(continued….)

customers.[191] Viasat argues that each of the Applicants lack sufficient satellite capacity in key market segments.[192] Viasat asserts that it currently lacks sufficient satellite coverage outside of North America to support intercontinental flights.[193] Inmarsat similarly claims that it has no contracts with U.S.-based commercial airlines due in large part to poor capacity over North America,[194] and that Inmarsat's North American business aviation customers have {[ ]}.[195] Inmarsat {[ ]} over key U.S. cities, including the Northeast corridor, that U.S. airlines seek.[196] As a result, Inmarsat's slower connectivity is unappealing to U.S.-based airlines, who demand fast, reliable connectivity where they fly the most.[197] In contrast, Viasat's satellite capacity is concentrated over North America: Viasat uses multiple satellites to provide broadband connectivity in North America, but "has no satellite coverage over other key regions, including the Arctic and Pacific Ocean."[198] The extended global coverage achieved by appending Inmarsat's thin-but-broad global coverage to Viasat's denser domestic coverage means the combined Viasat-Inmarsat would be able to compete more effectively.[199]

53. The Applicants further claim that the combined Viasat-Inmarsat will be better able to manage its network assets to serve growing demand.[200] For example, Inmarsat claims that the combined entity will have more options to allocate power to specific beams to meet peak demand dynamically, [201] giving it more flexibility to allocate capacity to meet consumer demand by virtue of coordinating a wider array of satellites.[202] According to Viasat, better optimization of the combined satellite network and

FCC-00107738 at ISAT-FCC-00107745-47 (Project Norman, Network and Government Discussion, Jan. 11, 2021); ISAT-FCC-00107964 at ISAT-FCC-00107968, ISAT-FCC-00107972-73 (Sam and Norman, Deal Rationale and Industrial Logic, July 2021).

[191] Viasat Dec. 23, 2022 RFI Narrative Response at 6-7; *see also* ISAT-FCC-00107964 at ISAT-FCC-00107968 (Sam and Norman, Deal Rationale and Industrial Logic, July 2021); Viasat/Inmarsat Mar. 24, 2023 White Paper at 25-26.

[192] Viasat Dec. 23, 2022 RFI Narrative Response at 6-7; Viasat/Inmarsat Mar. 24, 2023 White Paper at 25.

[193] Viasat Dec. 23, 2022 RFI Narrative Response at 6; *see also* Viasat/Inmarsat Mar. 24, 2023 White Paper at 15 ("{[ ]}. In Viasat's experience, end users are pushing for {[ ]} systems, even going so far as to publicly post {[ ]}").

[194] Viasat Dec. 23, 2022 RFI Narrative Response at 6; Viasat/Inmarsat Mar. 24, 2023 White Paper at 2.

[195] ISAT-FCC-00103868 (Phillippe Carette email Re: Final GX North American BGA Paper, Dec. 12, 2021).

[196] Viasat/Inmarsat Mar. 24, 2023 White Paper at 2-3.

[197] Viasat/Inmarsat Mar. 24, 2023 White Paper at 3.

[198] Viasat Dec. 23, 2022 RFI Narrative Response at 4-5.

[199] Viasat Dec. 23, 2022 RFI Narrative Response at 5-6.

[200] Inmarsat Dec. 23, 2022 RFI Narrative Response at 5-6; Viasat Dec. 23, 2022 RFI Narrative Response at 6.

[201] Inmarsat Dec. 23, 2022 RFI Narrative Response at 5-6 ("For instance, the combined company can utilize the Inmarsat satellites as baseload, and then, direct its higher density, smaller area beams in real time to any area where demand starts to increase (such as from an increase in the number of aircraft). This will allow the combined company to sell more during periods of average demand—and add more customers accordingly—knowing that it can meet peak demand in specific areas when needed.").

[202] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6 ("For instance, if Viasat and Inmarsat both have an area with low peak demand and low average demand, and both had been committing beams to this area, the combined company could divert one of the beams to a different, higher demand area. This would allow the combined firm to subscribe more customers (i.e., output expanding) and provide a higher level of service to existing customers.").

innovative strategies to match capacity to demand could yield a {[ ]} increase in efficiency from a given beam.[203]

54. Internal documents produced by the Applicants support the argument that the Viasat and Inmarsat fleets would complement each other, with Inmarsat providing a blanket of thin, global coverage and Viasat providing dense capacity overlays in high-demand regions.[204] We find that the gains in efficiency and capacity flowing from this merger are a cognizable public interest benefit.

55. *Service Innovations and Service-Quality Improvements.* Viasat claims that increased capacity resulting from the proposed transaction also would allow the merged company to offer enhanced services to meet existing and evolving customer demands, such as mobile satellite communications services.[205] Similarly, Inmarsat asserts that post-merger, it would provide Viasat with new technology and types of satellite capacity that would enable Viasat to enter "new business segments and offer new applications that require narrowband connectivity, including mobile Internet of things applications, and maritime and aviation safety communications."[206] The Applicants further claim that that the transaction "would allow the combined firm to subscribe more customers and provide a higher level of service to existing customers."[207]

56. Internal documents produced by the Applicants support these claimed benefits.[208] Although the Applicants have not attempted to quantify the value of these synergies, we nevertheless find that the merger is likely to result in service enhancements that constitute a public interest benefit.

57. *Enhanced Competitive Position of Viasat-Inmarsat.* The Applicants maintain that the proposed transaction will allow the merged entity to compete more effectively in the already robustly competitive satellite communications marketplace by facilitating the combined company's provision of new and enhanced services.[209] The merged entity will operate a fleet of eleven geostationary Ka-band satellites, various L-band satellites, two hybrid L-/Ka-band satellites, an S-band satellite,[210] and have several Ka-band satellites planned for launch over the next three years.[211] The Applicants further claim

[203] Viasat/Inmarsat Mar. 24, 2023 White Paper at 25.

[204] *See, e.g.*, VIA-2R-004348659 at VIA-2R-004348659 (Industry Brief, Viasat + Inmarsat: One-Off or Catalyst for Consolidation?, Nov. 9, 2021); VIA-2R-004588620 at VIA-2R-004588625 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[205] Viasat Dec. 23, 2022 RFI Narrative Response at 13.

[206] Inmarsat Dec. 23, 2022 RFI Narrative Response at 8; *see also* VIA-2R-004348666 at VIA-2R-004348672 (Connecting the World, Nov. 2021); VIA-2R-004588620 at VIA-2R-004588624 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[207] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6.

[208] *See, e.g.*, Viasat/Inmarsat Mar. 24, 2023 White Paper at 25-26; VIA-2R-004588620 at VIA-2R-004588622, VIA-2R-004588624-26, (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021); *see also* VIA-2R-004348666 at VIA-2R-004348680 (Viasat + Inmarsat, Connecting the World, Nov. 2021).

[209] Viasat Dec. 23, 2022 RFI Narrative Response at 7, 12; Inmarsat Dec. 23, 2022 RFI Narrative Response at 8.

[210] Viasat, *Satellite fleet*, https://www.viasat.com/space-innovation/satellite-fleet (last visited May 11, 2023); Viasat, *Viasat Global Ka-band Coverage*, https://www.viasat.com/space-innovation/satellite-fleet/global-satellite-internet/ (last visited May 11, 2023); Inmarsat, *Satellites*, https://www.inmarsat.com/en/about/technology/satellites.html (last visited May 11, 2023); Inmarsat, *I-6 Satellites*, https://www.inmarsat.com/en/about/technology/satellites/i-6 html (last visited May 11, 2023).

[211] Viasat Dec. 23, 2022 RFI Narrative Response at 8; Inmarsat Dec. 23, 2022 RFI Narrative Response at 9.

that, in the long term, the Viasat-Inmarsat network would benefit the public by counter-balancing low and medium-earth orbit competitors like SpaceX, OneWeb, and Amazon's forthcoming Project Kuiper.[212]

58. Internal documents produced by the Applicants confirm not only that the Viasat and Inmarsat fleets would complement each other, but also that the merger would give the combined entity the scale to invest more effectively in research and development and network infrastructure.[213] The ability to enhance growth and innovation and offer new and better services to customers could increase the competitiveness of both Viasat and Inmarsat.[214] While the Applicants do not attempt to quantify these benefits, we nevertheless find it a cognizable public interest benefit of the merger.

59. *Other Efficiencies.* Viasat and Inmarsat assert that the combined post-transaction satellite constellation will deliver improved reliability, resiliency, and redundancy to customers in adverse weather or other conditions, in cases of unforeseen outages and planned or emergency maintenance work, during periods of high demand, when planes are prevented from accessing specific satellites, and at the edges of coverage areas.[215] As discussed above, the addition of the L-band could certainly confer reliability, resiliency, and redundancy to the combined entity's satellite services, particularly in adverse weather. Although the Applicants do not attempt to quantify these claimed benefits, we nevertheless find them to be cognizable public interest benefits of the proposed transaction.

60. Finally, Inmarsat asserts that the proposed transaction "will enable the combined company to achieve substantial ongoing operating cost savings, including by meaningfully consolidating its ground network. In conjunction with the reduced expenditures on third-party capacity, these and other savings may amount to approximately {[ ]} million per year."[216] Viasat adds that the combined company "expects to save approximately {[ ]} million annually on back office and ground network costs (managing two networks as one) as well as {[ ]} million per year over the next 3 years on capital expenditures for duplicative outlays, plus {[ ]} million each year starting in 2026," which can be used to lower prices.[217] The parties fail to indicate, however, whether these projected savings are in the form of fixed or variable costs, and fail to provide adequate support for these claimed savings. Accordingly, we discount this claimed benefit.

VII. NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY, AND TRADE CONCERNS

61. When analyzing a transfer of control or assignment application or a petition for declaratory ruling that involves foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.[218] The Commission has

[212] *See* Narrative at 5-9; Viasat/Inmarsat Mar. 24, 2023 White Paper at 8 ("The transaction will improve Viasat's IFC offering and will enhance competition by ensuring that Viasat can continue to compete effectively—with a more attractive global IFC offering—against Intelsat, SpaceX, Panasonic and others.").

[213] *See, e.g.*, VIA-2R-004588620 at VIA-2R-004588622 (Edited Transcript, VSAT.OQ—ViaSat Inc and Inmarsat to Combine—M&A Call, Nov. 8, 2021).

[214] *See* Viasat/Inmarsat Mar. 24, 2023 White Paper at 26-27 ("The combination of the Viasat and Inmarsat networks will enhance competition by accelerating Viasat's ability to offer customers global broadband coverage at a higher quality and lower cost. Improved and lower-cost offerings will allow Viasat to compete more effectively in an already crowded and growing field, with customers reaping the benefits.").

[215] Viasat Dec. 23, 2022 RFI Narrative Response at 14-15; Inmarsat Dec. 23, 2022 RFI Narrative Response at 13.

[216] Inmarsat Dec. 23, 2022 RFI Narrative Response at 6.

[217] Viasat/Inmarsat Mar. 24, 2023 White Paper at 26.

[218] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider (continued….)

recognized its public interest analysis benefits from input by the Executive Branch agencies that have expertise in these issues. In particular, the Commission accords deference to Executive Branch agencies' unique expertise in identifying and interpreting issues of concern related to national security and law enforcement.[219] Accordingly, the Commission considers any concerns raised by Executive Branch agencies, but the Commission makes an independent decision on the applications and petitions based on the record in the proceeding.[220]

62. Pursuant to Commission practice, we referred the applications and Viasat Petition to the relevant Executive Branch agencies, including the Committee agencies, for their views on any national security, law enforcement, foreign policy, trade policy concerns related to the foreign ownership of the Applicants.[221] The Committee advised that it had no objection to the Commission's granting the applications and the Viasat Petition provided that the Commission conditions its approval on the assurances of Connect Topco and Viasat to abide by the commitments and undertakings set forth in the Letter of Agreement (LOA).[222]

63. In assessing the public interest, we take into account the record developed in each particular case and accord appropriate deference to the expertise of the Executive Branch agencies on national security and law enforcement, and other concerns related to foreign ownership of Commission licensees.[223] As the Commission stated in the *Foreign Participation Order*, foreign participation in the U.S. telecommunications market may implicate significant national security or law enforcement issues uniquely within the expertise of the Executive Branch.[224] For the reasons set out herein, in accordance with the request of the Committee and in the absence of any objection from the Applicants, we grant the Committee Petition and condition grant of the applications and the Viasat Petition on compliance by Viasat and Connect Topco with the commitments and undertakings set forth in the LOA.[225] A failure to

national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of applications for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act).

[219] *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272, 11277, para. 6 (2016) (*2016 Foreign Ownership Order*), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017); *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 62.

[220] *Foreign Participation Order*, 12 RCC Rcd at 23921, para. 66; *see also Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Second Report and Order, 28 FCC Rcd 5741, 5762, para. 34 (2013) (*2013 Foreign Ownership Order*) ("While the Commission has exercised its discretion to rely substantially on the views of Executive Branch agencies for their expertise on matters of national security, law enforcement, foreign policy and trade policy in cases involving foreign investment in U.S. common carrier and aeronautical licensees, we do not believe it would be appropriate for us essentially to delegate this statutory responsibility to such agencies."). On June 6, 2022, the DOJ, on behalf of the Committee, requested that the Commission defer action on the Application until such time as the Committee has completed its review for any national security and law enforcement concerns that may be raised by foreign participation in the U.S. telecommunications sector. *See* DOJ, The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector – Frequently Asked Questions, https://www.justice.gov/nsd/committee-assessment-foreign-participation-united-states-telecommunications-services-sector (last visited May 11, 2023); Committee Deferral Letter.

[221] *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24; *Foreign Participation Order,* 12 FCC Rcd 23891, 23919, paras. 61-63.

[222] Committee Petition at 1-2; LOA.

[223] *T-Mobile-Sprint Order*, 34 FCC Rcd at 10734-35, para. 353; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6; *Foreign Participation Order*, 12 FCC Rcd at 23919, paras. 61-62.

[224] *Foreign Participation Order*, 12 FCC Rcd at 23919, para. 62.

[225] Committee Petition; LOA.

comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses, and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this grant and the authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

VIII. SECTION 310(B) FOREIGN OWNERSHIP REVIEW AND DECLARATORY RULING

A. Review of Foreign Ownership in the Controlling U.S. Parents of Common Carrier Wireless and Satellite Radio Earth Station Licensees

64. In connection with the proposed transaction, the Petitioner filed a petition pursuant to section 1.5000(a)(1) of the Commission's rules, to permit foreign ownership of IGHI, the controlling U.S. parent of Inmarsat Solutions and ISAT, to exceed the 25% benchmarks in section 310(b)(4) of the Act.[226] The Petitioner contends that grant of the proposed foreign ownership of Viasat, including IGHI, would serve the public interest.[227] Inmarsat Solutions and ISAT are licensees of common carrier earth stations and thus subject to section 310(b) of the Act.

65. The Viasat Petition explains that, upon consummation of the proposed transaction, foreign entities will hold approximately 45% of the voting and equity interests in Viasat.[228] According to the Viasat Petition, each of the Inmarsat Investors directly holds 25% of Connect Topco's voting interests, and in turn, Connect Topco owns 99.19% of Connect Sub-Topco Limited (Connect Sub-Topco), with the remaining 0.81% owned by a small number of Inmarsat senior management shareholders.[229] As a result of the proposed transaction, Connect Topco will become a direct, wholly owned subsidiary of Viasat, and Connect Sub-Topco, IGHI, and the Inmarsat Licensees, including Inmarsat Solutions and ISAT, will become indirect, wholly owned subsidiaries of Viasat.[230] The Viasat Petition states that after the proposed transaction, each of the Inmarsat Investors would continue to hold indirect interests in IGHI through Viasat, and the aggregate interest would be diluted from 100% to 37.5%.[231] According to the Viasat Petition, the remaining portion of the estimated 45% aggregate post-transaction foreign ownership is held by entities that are beneficial owners of common stock.[232]

66. Viasat seeks approval for indirect foreign entities and individuals in the aggregate to hold up to 100% of the equity and voting interests in IGHI, the controlling U.S. parent.[233] Pursuant to section 1.5001(i) of the Commission's rules,[234] the Petitioner seeks specific approval for the direct and/or indirect foreign equity and/or voting interests that would be held in IGHI upon completion of the proposed

[226] 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1); Viasat Petition at 2.

[227] Viasat Petition at 2.

[228] *Id.* at 10.

[229] *Id.* at 4. According to the Viasat Petition, "Inmarsat Investors have a contractual right to designate for nomination up to two out of ten directors to Viasat's board of directors; their right to designate directors for nomination is subject to their ownership percentage of the total outstanding shares of Viasat's common stock. Those parties also are contractually obligated to vote their shares in accordance with the recommendation of the Viasat board of directors or any applicable committee thereof with respect to any action, proposal or matter to be voted on by the Viasat stockholders for a specified period." *Id*. at 5, 11.

[230] *Id.* at 5.

[231] *Id.* at 8.

[232] Viasat Petition at 10.

[233] Updated Specific Approval and Advance Approval Supplement at 11; Updated Ownership Diagrams Supplement.

[234] 47 CFR §1.5001(i).

transaction by certain foreign-organized entities and foreign individuals at the percentages specified below:

Inmarsat Solutions Limited (100% equity and voting) (United Kingdom);

Inmarsat Finance III Limited (100% equity and voting) (United Kingdom);

Inmarsat New Ventures Limited (100% equity and voting) (United Kingdom);

Inmarsat Investments Limited (100% equity and voting) (United Kingdom);

Inmarsat Group Limited (100% equity and voting) (United Kingdom);

Inmarsat Holdings Limited (100% equity and voting) (United Kingdom);

Inmarsat Group Holdings Limited (100% equity and voting) (United Kingdom);

Connect Bidco Limited (100% equity and voting) (Guernsey);

Connect Midco Limited (100% equity and voting) (Guernsey);

Connect Sub-Topco Limited (100% equity and voting) (Guernsey); and

Connect Topco Limited (100% equity and voting) (Guernsey).

Triton LuxTopHolding SARL (<9.375% equity and <9.375% voting) (Luxembourg), and the following affiliated entities and individuals:

Triton Lux EquityCo SARL (<8.418% equity and <8.418% voting) (Luxembourg);

Apax IX USD L.P. (<6.197% equity and <8.418% voting) (Guernsey);

Apax IX USD Co-Investment L.P. (<0.055% equity and <8.418% voting) (Guernsey);

Apax IX EUR L.P. (<2.127% equity and <8.418% voting) (Guernsey);

Apax IX EUR Co-Investment L.P. (<0.039% equity and <8.418% voting) (Guernsey);

A9 USD (Feeder) L.P. (<2.784% equity and <2.784% voting) (Guernsey);

A9 USD Founder L.P(<0.01% equity and 0% voting) (Guernsey);

A9 EUR (Feeder) L.P. (<1.509% equity and <1.509% voting) (Guernsey);

A9 EUR Founder L.P. (<0.01% equity and 0% voting) (Guernsey);

Apax IX USD GP L.P., Inc. (<0.044% equity and <8.418% voting) (Guernsey);

Apax IX EUR GP L.P. Inc. (0% equity and <8.418% voting) (Guernsey);

Apax IX GP Co. Limited (<8.418% equity and <9.375% voting) (Guernsey);

Apax IX Founder GP Co. Limited (<0.01% equity and 0% voting) (Guernsey);

Apax Guernsey (Holdco) PCC Limited Apax IX Cell (0% equity and <9.375% voting) (Guernsey);

Connect Syndication L.P. (<0.957% equity and <0.957% voting) (Guernsey);

Connect Syndication GP Co. Limited (0% equity and <0.957% voting) (Guernsey);

The Hirzel IV Purpose Trust (0% equity and <9.375% voting) (Guernsey);

Andrew Guille (Trustee, 0% equity and <9.375% voting) (United Kingdom);

Jacqueline Ward (Trustee, 0% equity and <9.375% voting) (United Kingdom); and

Simon Cresswell (Trust Enforcer, 0% equity and 0% voting) (Australia).

CPP Investment Board Private Holdings (4) Inc. (<9.375% equity and <9.375% voting) (Canada), and the following affiliated entities:

Canada Pension Plan Investment Board (<9.375% equity and <9.375% voting) (Canada); and

Ontario Teachers' Pension Plan Board (<9.375% equity and <9.375% voting) (Canada).

WP Triton Co-Invest, L.P. (<9.27% equity and <9.27% voting) (Cayman Islands), and the following affiliated entities:

Warburg Pincus (Callisto-A) Global Growth (Cayman), L.P. (<1.89% equity and <1.89% voting) (Cayman Islands);

Warburg Pincus (Europa) Global Growth (Cayman), L.P. (<1.92% equity and <1.92% voting) (Cayman Islands);

Warburg Pincus Global Growth-B (Cayman), L.P. (<1.39% equity and <1.39% voting) (Cayman Islands);

Warburg Pincus Global Growth-E (Cayman), L.P. (<1.19% equity and <1.19% voting) (Cayman Islands);

WP Global Growth Partners (Cayman), L.P. (<0.17% equity and <0.17% voting) (Cayman Islands);

Warburg Pincus Global Growth Partners (Cayman), L.P. (<0.7% equity and <0.47% voting) (Cayman Islands);

WP Triton Investment, L.P. (<2.24% equity and <2.24% voting) (Cayman Islands);

Warburg Pincus (Cayman) Global Growth GP, L.P. (0% equity and <9.27% voting) (Cayman Islands);

Warburg Pincus Partners II (Cayman), L.P. (0% equity and <9.27% voting) (Cayman Islands); and

Warburg Pincus (Bermuda) Private Equity GP, Ltd. (0% equity and <9.27% voting) (Bermuda).

67. Pursuant to section 1.5001(k) of the Commission's rules,[235] Viasat requests advance approval to permit Connect Topco and the foreign entities that directly and indirectly own IGHI, and the Inmarsat Investors and their owners and noncontrolling parties to increase their interests in IGHI up to and including a noncontrolling 49.99% equity and voting interest.[236]

68. We received no comments regarding foreign ownership. As noted above, NTIA, on behalf of the Committee, has advised the Commission that the Committee has no objection to the Commission approving the authority sought, provided that the Commission conditions its approval on the assurance of Viasat and Connect Topco to abide by the commitment and undertakings set forth in the LOA.[237]

[235] 47 CFR § 1.5001(k).

[236] *Id*.

[237] Committee Petition; LOA.

B. Foreign Ownership Ruling.

69. Based on our review of the record, we find that the public interest would not be served by prohibiting the foreign ownership of IGHI, the controlling U.S. parent of Inmarsat Solutions and ISAT, in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Viasat Petition subject to the conditions set out herein.

70. This ruling authorizes 100% aggregate foreign ownership of IGHI, the controlling U.S. parent of Inmarsat Solutions and ISAT, subject to the terms and conditions set forth in section 1.5004 of the Commission's rules.[238] In addition, pursuant to section 1.5001(i) of the Commission's rules, we approve the foreign equity and voting interests that would be held in IGHI by each of the above-listed foreign entities and individuals in the amounts specified above. We also approve the Petitioner's request for advance approval, pursuant to section 1.5001(k) of the Commission's rules, permitting Connect Topco and the foreign entities that directly and indirectly own IGHI, and the Inmarsat Investors and their owners and noncontrolling parties to increase their interests in IGHI up to and including a noncontrolling 49.99% equity and voting interest.

71. Under this ruling, Viasat and IGHI have an affirmative duty to monitor their foreign equity and voting interests, calculate these interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules,[239] and otherwise ensure continuing compliance with the provisions of section 310(b)(4) of the Act.[240] A failure to comply and/or remain in compliance with a condition of this authorization shall constitute grounds for declaring the ruling terminated without further action on the part of the Commission. A failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

IX. CONCLUSION

72. After carefully reviewing the record in this proceeding, we find that the proposed transaction will not violate the Act or the Commission's rules. We further find that it is unlikely to have adverse competitive effects in the market segments in which the Applicants compete. At the same time, we find that the proposed transaction will generate several public interest benefits, including giving the merged entity greater spectrum density and diversity and additional satellite capacity as well as enabling the merged entity to offer innovative services and improved service quality. Accordingly, we find that approval of this transaction will serve the public interest, convenience, and necessity.

X. ORDERING CLAUSES

73. **ACCORDINGLY**, having reviewed the applications, Viasat Petition, and the record in this matter, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 5(c), 214(a), 214(c), 303(r), 309, and 310(d) of the Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), 214(a), 214(c), 303(r), 309, 310(d), and sections

[238] 47 CFR § 1.5004. A few of the terms and conditions set forth in section 1.5004 of the Commission's rules are as follows: (1) where a previously unapproved foreign-organized entity is inserted into the vertical ownership chain of a licensee, or its controlling U.S.-organized parent, without prior Commission approval, the licensee shall file a letter to the attention of the Chief, Office of International Affairs, within 30 days after the insertion of the new, foreign organized entity; (2) a licensee that has received a foreign ownership ruling, including a U.S.-organized successor in-interest to such licensee as part of a pro forma reorganization, or any subsidiary or affiliate relying on such licensee's ruling, shall file a new petition for declaratory ruling under § 1.5000 to obtain Commission approval before its foreign ownership exceeds the routine terms and conditions of this section, and/or any specific terms of conditions of its rulings; and (3) if at any time the licensee, including any successor-in interest and any subsidiary or affiliate knows, or has reason to know, that it is no longer in compliance with its foreign ownership rulings or the Commission's rules relating to foreign ownership, it shall file a statement with the Commission explaining the circumstances within 30 days of the date it knew, or had reason to know, that it was no longer in compliance.

[239] *See* 47 CFR § 1.5002-1.5003.

[240] *See* 47 CFR § 1.5004, Note to paragraph (a).

25.119, 63.04, and 63.24 of the Commission's rules, 47 CFR §§ 25.119, 63.04, 63.24, and pursuant to the authority delegated under sections 0.261 and 0.351 of the Commission's rules, 47 CFR §§ 0.261 and 0.351, that the Applications to transfer control of the authorizations and licenses listed in Appendix A **ARE GRANTED**, subject to the conditions specified in this Memorandum Opinion and Order and Declaratory Ruling.

74. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(b), and sections 1.5000-1.5004 of the Commission's rules, 47 CFR §§ 1.5000-1.5004, the Petition for Declaratory Ruling filed by Petitioner **IS GRANTED**, subject to the conditions specified in this Memorandum Opinion and Order and Declaratory Ruling.

75. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 310(b), and sections 1.5000-1.5004 of the Commission's rules, 47 CFR §§ 1.5000-1.5004, the Committee Petition to Adopt Conditions to Authorizations and Licenses filed by the NTIA **IS GRANTED**.

76. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), 214, 303(r), 309, 310(b), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(r), 309, 310(b), 310(d), and sections 1.948, 63.03-63.04, 63.24 and 1.40001-1.40004 of the Commission's rules, 47 CFR §§ 1.948, 63.03-63.04, 63.24, 1.40001-1.40004, grant of the applications and Petition for Declaratory Ruling is **SUBJECT TO** compliance by Viasat and Connect Topco with the terms of the Letter of Agreement from Robert Blair, Senior Vice President, General Counsel and Secretary, Viasat, and Alison Horrocks, Secretary, Connect Topco, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, United States Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense, dated February 15, 2023. A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. A failure to meet a condition of the grant may also result in monetary sanctions or other enforcement action by the Commission.

77. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), and sections 25.119 and 25.159(b) of the Commission's rules, 47 CFR §§ 25.119, 25.159(b), grant of the applications is **SUBJECT TO** Viasat and Inmarsat taking any actions necessary concurrent with consummation of the transaction to come into compliance with or obtain relief from the provisions of section 25.159(b) of the Commission's rules, 47 CFR § 25.159(b).

78. **IT IS FURTHER ORDERED** that this Memorandum Opinion and Order and Declaratory Ruling **SHALL BE EFFECTIVE** upon release, in accordance with section 1.102 of the Commission's rules, 47 CFR § 1.102. Petitions for reconsideration under section 1.106 of the Commission's Rules, 47 CFR § 1.106, may be filed within thirty days of the release date of this Memorandum Opinion and Order and Declaratory Ruling.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief, Space Bureau

M. Ethan Lucarelli
Chief, Office of International Affairs

APPENDIX A

List of Applications

Part 25 – Earth Station Licenses

File Number	Licensee	Lead Call Sign
SES-T/C-20220201-00145	ISAT US Inc.	E090032
SES-T/C-20220201-00146	Inmarsat Inc.	E150028
SES-T/C-20220201-00147	Inmarsat Inc.	E080059
SES-T/C-20220201-00148	ISAT US Inc.	E140029
SES-T/C-20220201-00149	Inmarsat Solutions (US) Inc.	E000180

Part 63 – International Section 214 Authorizations

The application for consent to the transfer of control of international section 214 authorizations has been assigned the file number listed below.

File Number	Authorization Holder	Authorization Numbers
ITC-T/C-20220201-00026	Inmarsat Group Holdings Inc.	ITC-214-19980121-00028 ITC-214-20090501-00194

Petition for Declaratory Ruling under Section 310(b)(4)

The Petition has been assigned File No. ISP-PDR-20220131-00001.